THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 4 NUMBER 64

Washington, Tuesday, April 4, 1939

The President

EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR TO SPAIN

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS Public Resolution No. 1, 75th Congress, approved January 8, 1937, provides in part as follows:

"That during the existence of the state of civil strife now obtaining in Spain it shall, from and after the approval of this Resolution be unlawful to export arms, ammunition, or implements of war from any place in the United States, or possessions of the United States, to Spain or to any other foreign country for transshipment to Spain or for use of either of the opposing forces in Spain. Arms, ammunition, or implements of war, the exportation of which is prohibited by this Resolution, are those enumerated in the President's Proclamation No. 2163 of April 10, 1936."

AND WHEREAS it is provided further by said joint resolution of January 8, 1937, that

"When in the judgment of the President the conditions described in this Resolution have ceased to exist, he shall proclaim such fact, and the provisions hereof shall thereupon cease to apply."

AND WHEREAS by my Proclamation No. 2236 of May 1, 1937,[1] issued pursuant to the provisions of sections 1 and 11 of the joint resolution of Congress approved May 1, 1937, amending the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war," approved August 31, 1935, as amended February 29, 1936, it was declared that a state of civil strife unhappily existed in Spain and that such civil strife was of a magnitude and was being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to Spain would threaten and endanger the peace of the United States:

AND WHEREAS section 1 (g) of the said joint resolution of May 1, 1937, provides that

"Whenever, in the judgment of the President, the conditions which have caused him to issue any proclamation under the authority of this section have ceased to exist, he shall revoke the same, and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed, or forfeitures incurred, prior to such revocation."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred on me by the aforesaid joint resolutions, do hereby proclaim that in my judgment the state of civil strife in Spain described in said joint resolution of January 8, 1937, and the conditions which caused me to issue the said proclamation of May 1, 1937, have ceased to exist, and I do hereby revoke said proclamation of May 1, 1937. Accordingly, the provisions of the said joint resolution of January 8, 1937, and of the said proclamation of May 1, 1937, no longer apply.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 1st day of April, in the year of [SEAL] our Lord nineteen hundred and thirty-nine, and of the Inde-

[1] 2 F. R. 776 (923 DI).

CONTENTS

THE PRESIDENT

RULES, REGULATIONS, ORDERS

(Continued on next page)

FEDERAL REGISTER

Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1 per month or $10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the FEDERAL REGISTER should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

CONTENTS—Continued

CONTENTS—Continued

pendence of the United States of America the one hundred and sixty-third.

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL
Secretary of State.

[F. R. Doc. 39–1125; Filed, April 3, 1939; 11:53 a. m.]

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

[Order No. 3, as amended]

MARKETING ORDERS

PART 903—ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE ST. LOUIS, MISSOURI, MARKETING AREA*

Sec.
903.0 Findings.
903.1 Definitions.
903.2 Market administrator.
903.3 Classification of milk.
903.4 Minimum prices.
903.5 Reports of handlers.
903.6 Handlers who are also producers.
903.7 Determination of uniform prices to producers.
903.8 Payments for milk.
903.9 Expense of administration.
903.10 Unfair methods of competition.
903.11 Market advisory committee.
903.12 Effective time, suspension, and termination of order as amended.
903.13 Liability.

Whereas, H. A. Wallace, Secretary of Agriculture of the United States of America, pursuant to the provisions of Title I of Public Act No. 10, 73d Congress, as amended (48 Stat. 31), issued, on January 30, 1936, Order No. 3 Regulating the Handling of Milk in the St. Louis, Missouri, Marketing Area, said order being effective February 1, 1936; and

Whereas, said order was amended, effective April 17, 1936, and April 1, 1937; and

Whereas, the Secretary, on December 10, 1935, tentatively approved a Marketing Agreement Regulating the Handling of Milk in the St. Louis, Missouri, Marketing Area, amendments to which were tentatively approved on March 30, 1936, and March 16, 1937; and

Whereas, the Secretary, having reason to believe that said tentatively approved marketing agreement, as amended, and said order, as amended, should be further amended, gave, on the 9th day of December 1938, notice of a hearing to be held on the 14th day of December 1938, at St. Louis, Missouri, on a proposed amendment of said tentatively approved marketing agreement, as amended, and of said order, as amended, and at said time and place conducted a public hearing at which all interested parties were afforded an opportunity to be heard on said proposed amendment, which public hearing was reopened on the 2d day of February 1939,[1] for the purpose of receiving additional evidence and for the purpose of providing all persons with an opportunity to present oral arguments for or against the amendment of said marketing agreement, as amended, and of said order, as amended; and

Whereas, after such hearings and after the tentative approval on the 10th day of March 1939, by the Secretary, of a marketing agreement, as amended, handlers of more than 50 percent of the volume of milk covered by such order, as amended, which is marketed within the St. Louis, Missouri, marketing area, refused or failed to sign such tentatively approved marketing agreement, as amended, relating to milk; and

Whereas, the Secretary determined on the 27th day of March 1939, said determination being approved by the President of the United States on the 28th day of March 1939, that said refusal or failure tends to prevent the effectuation of the declared policy of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), and that this order, as amended, is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area and is approved or favored by over 67 percent of the producers voting in a referendum who, during the month of November 1938, said month being determined by the Secretary to be a representative period, were engaged in the

*Section 903.0 to and including Section 903.13 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C., § 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U. S. C. § 601 et seq. (Supp. IV 1938).

[1] 4 F. R. 476 DI.

production of milk for sale in the St. Louis, Missouri, marketing area; and

Whereas, the Secretary finds, upon the evidence introduced at the two last above-mentioned hearings, said findings being in addition to the findings made upon the evidence introduced at the hearings on said order and on said two amendments and to the other findings made prior to or at the time of the original issuance of said order and of the two amendments thereto (which findings are hereby ratified and affirmed save only as such findings are in conflict with the findings hereinafter set forth):

SEC. 903.0 *Findings.* 1. That the marketing area as herein defined confines the application of the order, as amended, to the pricing of milk in an area in which milk of substantially uniform quality, as governed by applicable health and sanitary regulations, may be sold, and that said area is the proper area to accomplish the purposes of the order, as amended;

2. That the minimum prices fixed by the order, as amended, will, over a period of time, tend to give milk sold in the marketing area a purchasing power with respect to articles that producers buy equivalent to the purchasing power of such milk in the base period, January 1923–July 1929; that the fixing of such prices does not have for its purpose the maintenance of prices to producers above the levels which are declared in the act to be the policy of Congress to establish; and that the reduction in class prices when the total volume of milk exceeds 29,000,000 pounds provides for an economic adjustment of prices when supplies of milk are in excess of normal marketing requirements;

3. That the amendment of the provision for the classification of milk will aid in the administration of said order, as amended;

4. That the order, as amended, regulates the handling of milk in the same manner as and is applicable only to handlers specified in the marketing agreement, as amended, upon which hearings have been held;

5. That the issuance of the order, as amended, and all of its terms and conditions will tend to effectuate the declared policy of the act.

Now, therefore, the Secretary of Agriculture, pursuant to the authority vested in him by the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, hereby orders that such handling of milk in the St. Louis, Missouri, marketing area as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in conformity to and in compliance with the following terms and conditions:

SEC. 903.1 *Definitions*—(a) *Terms.* The following terms shall have the following meanings:

(1) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246).

(2) The term "Secretary" means the Secretary of Agriculture of the United States.

(3) The term "St. Louis marketing area," hereinafter called the "marketing area," means the territory within the corporate limits of the cities of St. Louis, Kirkwood, and Valley Park, Missouri; the territory within St. Ferdinand, Normandy, Clayton, Jefferson, and Carondelet townships in St. Louis County, Missouri; and the territory within East St. Louis, Centerville, Canteen, and Stites townships in St. Clair County, Illinois.

(4) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(5) The term "producer" means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with, or subject to, the health requirements applicable for milk to be sold for consumption as milk in the marketing area.

(6) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion, of which milk is disposed of as milk in the marketing area, and who, on his own behalf or on behalf of others engages in such handling of milk as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products.

(7) The term "market administrator" means the person designated pursuant to Sec. 903.2 as the agency for the administration hereof.

(8) The term "delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

SEC. 903.2 *Market administrator*—(a) *Selection, removal, and bond.* The market administrator shall be selected, and shall be subject to removal at any time, by the Secretary. Within forty-five (45) days following the date upon which he enters upon his duties, the market administrator shall execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) *Compensation.* The market administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) *Powers.* The market administrator shall have power:

(1) To administer the terms and provisions hereof; and

(2) To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

(d) *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(5) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

(6) Furnish to the market advisory committee, when the same has been duly constituted, factual information in the form of general statements: Provided, That such statements shall not identify the information furnished to the market administrator by any person;

(7) Publicly disclose to handlers and to producers, unless otherwise directed by the Secretary, the name of any handler who, within fifteen (15) days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to Sec. 903.5 and (b) made payments pursuant to Sec. 903.8; and

(8) Pay, out of the funds provided by Sec. 903.9, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred for the maintenance and functioning of his office and for the performance of his duties.

SEC. 903.3 *Classification of milk*—(a) *Basis of classification.* Milk received by each handler, including milk produced by him, if any, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) *Classes of utilization.* The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of milk containing not less than one-half of 1 percent of butterfat and all milk not specifically accounted for as Class II milk.

(2) Class II milk shall be all milk specifically accounted for (a) as actual plant shrinkage, but not to exceed 3 percent of the total receipts of milk from producers and (b) as being used or disposed of in any form other than as milk containing not less than one-half of 1 percent of butterfat.

(c) *Interhandler sales.* Milk disposed of as milk or cream by a handler to an-

other handler shall be presumed to be Class I milk: Provided, That if such selling handler, on or before the date fixed for filing reports pursuant to Sec. 903.5, shall furnish proof satisfactory to the market administrator that such milk has been disposed of by the purchasing handler other than as Class I milk, then, and in that event, such milk shall be classified as Class II milk.

(d) *Source of Class I milk.* The milk which was disposed of by each handler as Class I milk shall be presumed to have been that milk which was delivered to such handler at plants within and nearest to the marketing area.

SEC. 903.4 *Minimum prices*—(a) *Class I prices.* Each handler shall pay producers, in the manner set forth in Sec. 903.8, for Class I milk, not less than the following prices:

(1) In the case of milk received at such handler's plant located in the marketing area, $2.20 per hundredweight;

(2) In the case of milk received at such handler's plant located outside the marketing area, $2.20 per hundredweight less the amount specified for the airline distance of such plant from the City Hall in St. Louis, as follows: Within 5 miles, 4 cents; more than 5 miles but not in excess of 10 miles, 8 cents; more than 10 miles but not in excess of 15 miles, 12 cents; more than 15 miles but not in excess of 20 miles, 16 cents; more than 20 miles but not in excess of 30 miles, an additional 2 cents; more than 30 miles but not in excess of 40 miles, an additional 2 cents; and for each additional 10 miles, in excess of 40 miles, an additional 1 cent.

(b) *Class II prices.* Each handler shall pay producers, in the manner set forth in Sec. 903.8, for Class II milk, not less than the following prices:

(1) In the case of milk received at such handler's plant located in the marketing area, a price per hundredweight which shall be calculated by the market administrator as follows: Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk is received, add 30 percent thereof and add 15 cents;

(2) In the case of milk received at such handler's plant located outside the marketing area, the price calculated by the market administrator pursuant to subparagraph (1) of this paragraph less 15 cents; and

(3) In the case of milk used by such handler for evaporated milk in hermetically sealed containers, the price set forth in the Marketing Agreement and License for Evaporated Milk, issued by the Secretary May 31, 1935.

(c) *Price adjustment.* For each delivery period during which the total receipts of milk by handlers from producers exceed 29,000,000 pounds, as determined by the market administrator from reports submitted by handlers pursuant to Sec. 903.5 (a), the prices set forth in paragraphs (a) and (b) of this section shall be reduced 1 cent per hundredweight for each 1 million pounds, or part thereof, of milk received by handlers from producers in excess of 29,000,000 pounds.

(d) *Sales outside the marketing area.* The price for Class I milk set forth in paragraph (a) of this section shall not apply to milk disposed of in such class outside the marketing area. However, the market administrator, in computing the uniform price for each handler pursuant to Sec. 903.7 (a), shall determine the value of such milk by applying the price per hundredweight which the handler has reported pursuant to Sec. 903.5 (e).

(e) *Publication of class II price.* On or before the 2d day after the end of each delivery period, the market administrator shall publicly announce the Class II price in effect for such delivery period.

SEC. 903.5 *Reports of handlers*—(a) *Periodic reports.* On or before the 5th day after the end of each delivery period, each handler shall, with respect to milk or cream handled by him during such delivery period, report to the market administrator, in the detail and form prescribed by the market administrator, as follows:

(1) The receipts at each plant from producers who are not handlers;

(2) The receipts at each plant from any other handler, including any handler who is also a producer;

(3) The quantity, if any, produced by the handler;

(4) The receipts at each plant from any other source; and

(5) The respective quantities of milk which were used or disposed of, including sales to other handlers, for the purpose of classification pursuant to Sec. 903.3.

(b) *Reports as to producers.* Each handler shall report to the market administrator:

(1) Within ten (10) days after the market administrator's request, with respect to any producer for whom such information is not in the files of the market administrator and with respect to a period or periods of time designated by the market administrator (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days on which deliveries were made.

(2) As soon as possible after first receiving milk from any producer, (a) the name and address of such producer and (b) the date on which such milk was first received.

(3) As soon as possible after the date on which the handler stops receiving milk from any producer (a) the name and address of such producer and (b) the date on which the milk of such producer was last received.

(4) On or before the 10th day after the request of the market administrator a schedule which will show transportation rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plan or plants.

(5) On or before the 10th day after any changes are made in the schedule filed in accordance with subparagraph (4) of this paragraph, a copy of the revised schedule with the effective dates of such changes as may appear in the revised schedules.

(c) *Report of payment to producers.* Each handler shall submit to the market administrator, within twenty (20) days after the end of each delivery period, his producer pay roll, or a report, which shall show, for such delivery period and for each and every producer, (a) his total delivery of milk with the average butterfat test thereof and (b) the net amount of the payment made to him with the prices, deductions and charges involved.

(d) *Verification of reports.* Each handler shall permit the market administrator or his representative, during the usual hours of business, to (a) verify the information contained in reports submitted by such handler pursuant to this section, and (b) weigh, sample, and test milk for butterfat. If, in the verification of the report of purchases and sales of the handler for any previous delivery period, the market administrator finds that differences occur between the reported and actual quantities of milk received or between the reported and actual quantities of milk disposed of in each class, he shall make the adjustments in such quantities of milk necessary to account for such differences and shall add to, or subtract from, the value of milk in the current pool for such handler, computed pursuant to Sec. 903.7 (a), an amount of money representing the value, at the class prices effective during the delivery period for which the verification is being made, of milk accounted for by such adjustments .

(e) *Reports on milk sold outside the marketing area.* Each handler shall report, on or before the 5th day after the end of each delivery period, the disposition of Class I milk outside the marketing area, as follows: (a) the amount of such milk, (b) the date or dates of such disposition, (c) the point of use, (d) the plant from which such milk was shipped, (e) the price per hundredweight to be paid for such milk, and (f) such other information with respect thereto as the market administrator may require.

SEC. 903.6 *Handlers who are also producers.*—(a) *Milk purchased or received from producers.* In the case of a handler who is also a producer and has purchased or received milk from producers, the market administrator shall, in the computations set forth in Sec. 903.7, first exclude the milk purchased or received by him in each class from other handlers and then apportion the milk purchased or received by him from producers to each class according to the ratio which

such handler's remaining total sales in each class bears to his remaining total sales in all classes.

SEC. 903.7 *Determination of uniform prices to producers.*—(a) *Computation of the value of milk for each handler.* For each delivery period the market administrator shall compute, subject to the provisions of Sec. 903.6, the value of milk disposed of by each handler, which was not purchased or received from other handlers by (a) multiplying the hundredweight of Class I milk disposed of in the marketing area by the Class I price, (b) multiplying the total hundredweight of Class II milk by the Class II price, (c) adding together the resulting amounts, and (d) adding to the sum obtained in (c) of this paragraph an amount equal to the total value of Class I milk disposed of outside of the marketing area, determined in accordance with Sec. 903.4 (d).

(b) *Computation and announcement of uniform price for each handler.* The market administrator shall compute and announce for each handler the uniform price per hundredweight of milk received by him from producers during each delivery period as follows:

(1) Add to the value computed pursuant to paragraph (a) of this section the amount of adjustment to be made pursuant to Sec. 903.8 (d);

(2) Subtract the total amount to be paid pursuant to Sec. 903.8 (a) (2);

(3) Divide by the total quantity of milk received from producers other than the milk represented by the amount subtracted in subparagraph (2) of this paragraph;

(4) On or before the 10th day after the end of each delivery period, notify each handler of the uniform price computed for him; and

(5) On or after the 15th day after the end of each delivery period, publicly announce the uniform price computed for each handler pursuant to this section with the differentials applicable pursuant to Sec. 903.8 (d).

SEC. 903.8 *Payments for milk*—(a) *Time and method of payment.* On or before the 15th day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in paragraph (c) of this section, for the total value of milk received from producers during such delivery period as follows:

(1) To producers, except as set forth in subparagraph (2) of this paragraph, at not less than the uniform price per hundredweight computed for such handler pursuant to Sec. 903.7, subject to the country station differentials set forth in paragraph (d) of this section; and

(2) To any producer, whose milk was not regularly received by a handler or by persons within the marketing area during a period of 30 days next preceding February 1, 1936, for all the milk received from such producer during the period beginning with the first regular delivery by such producer and continuing until the end of 2 full calendar months following the first day of the next succeeding calendar month, at the Class II price in effect at such handler's plant where the milk of such producer was received.

(b) *Errors in payments.* Errors in making the payments prescribed in this section shall be corrected not later than the date for making payments next following the determination of such errors.

(c) *Butterfat differential.* If any handler has received from any producer, during the delivery period, milk having an average butterfat content other than 3.5 percent, such handler, in making payments pursuant to paragraph (a) of this section, shall add to the uniform price for such producer for each one-tenth of 1 percent of average butterfat content in milk above 3.5 percent not less than, or shall deduct from the uniform price for such producer for each one-tenth of 1 percent of average butterfat content in milk below 3.5 percent not more than, three (3) cents per hundredweight.

(d) *Country station differentials.* In making payments pursuant to paragraph (a) (1) of this section for milk received from producers at plants located outside the marketing area, if any, each handler shall deduct the amount per hundredweight specified for the airline distance of any such plant from the City Hall in St. Louis as follows: Within 5 miles, 4 cents; more than 5 miles but not in excess of 10 miles, 8 cents; more than 10 miles but not in excess of 15 miles, 12 cents; more than 15 miles but not in excess of 20 miles, 16 cents; more than 20 miles but not in excess of 30 miles, an additional 2 cents; more than 30 miles but not in excess of 40 miles, an additional 2 cents; and for each additional 10 miles in excess of 40 miles, an additional 1 cent.

(e) *Additional payments.* (1) Any handler may make payment to producers in addition to the payments to be made pursuant to paragraph (a) of this section: Provided, That such additional payments shall be uniform as among all producers similarly circumstanced.

(2) Each handler shall pay to any producers' cooperative association, which the Secretary determines to be qualified under the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," and to be rendering services to such handler, a sum not exceeding 4 cents per hundredweight of milk delivered by the members of such association as a payment for the service of such association to such handler.

SEC. 903.9 *Expense of administration*—(a) *Payments by handlers.* As his pro-rata share of the expense of the administration hereof, each handler, on or before the 15th day after the end of each delivery period, shall pay to the market administrator, with respect to all milk received by him from producers or an association of producers, or produced by him during such delivery period, an amount not exceeding 1 cent per hundredweight, the exact amount to be determined by the market administrator, subject to review by the Secretary. Each handler, who is a cooperative association of producers, shall pay such pro-rata share of expense only on that milk received from producers at any plant of such association.

(b) *Suits by market administrator.* The market administrator may maintain a suit in his own name against any handler for the collection of such handler's pro-rata share of expense set forth in this section.

SEC. 903.10 *Unfair methods of competition.* Each handler shall refrain from acts which constitute unfair methods of competition by way of indulging in any practices with respect to the transportation of milk for, and the supplying of goods and services to, producers from whom milk is received, which tend to defeat the purpose and intent of this order, as amended.

SEC. 903.11 *Market advisory committee*—(a) *Representation, selection, approval, and removal.* Subsequent to the effective date of this order, as amended, representatives of producers, handlers, and consumers, respectively, may certify to the Secretary the selection of three individuals by each group for membership on the market advisory committee. Upon approval of the Secretary, the nine individuals so selected shall constitute the market advisory committee. Each member of the market advisory committee shall serve for a term of 1 year unless sooner removed by the Secretary. After the market advisory committee has been constituted, vacancies in the membership thereof shall be filled in the same manner as the original selections were made.

(b) *Powers.* The market advisory committee shall have the power to recommend to the Secretary amendments to this order, as amended, originating within itself or submitted to it by interested parties, after a study of the facts available to the market advisory committee.

SEC. 903.12 *Effective time, suspension, and termination of order as amended*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to paragraph (b) of this section.

(b) *Termination of order as amended.* The Secretary may terminate or suspend this order, as amended, whenever he finds that this order, as amended, obstructs or does not tend to effectuate the declared policy of the act. This order, as amended, shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty of the market administrator.* If, upon the sus-

pension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions hereof, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

SEC. 903.13 *Liability*—(a) *Liability of handlers.* The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.

Now, therefore, H. A. Wallace, Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order, as amended, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 31st day of March 1939, and declares this order, as amended, to be effective on and after the 5th day of April 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39–1111; Filed, April 1, 1939; 12:42 p. m.]

[Order No. 35]

MARKETING ORDERS

PART 935—ORDER REGULATING THE HANDLING OF MILK IN THE OMAHA-COUNCIL BLUFFS MARKETING AREA*

Sec.
935.0 Findings.
935.1 Definitions.
935.2 Market administrator.
935.3 Classification of milk.
935.4 Minimum prices.
935.5 Reports of handlers.
935.6 Handlers who are also producers.
935.7 Determination of uniform prices to producers.
935.8 Payments for milk.
935.9 Expense of administration.
935.10 Effective time, suspension, and termination of order.
935.11 Liability of handlers.

Whereas, under the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture of the United States is empowered, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in such handling of any agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, under the terms and provisions of said act, the Secretary of Agriculture is empowered to issue orders applicable to processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c, such orders to regulate only such handling of such agricultural commodity or product thereof as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, the Secretary of Agriculture, having reason to believe that the execution of a marketing agreement and the issuance of an order with respect to the handling of milk in the Omaha-Council Bluffs marketing area would tend to effectuate the declared policy of said act, gave, on the 3d day of December 1938, notice of a public hearing to be held at Omaha, Nebraska, on December 15, 1938, on a proposed marketing agreement and a proposed order, which hearing was reopened at Omaha, Nebraska, on the 1st day of February 1939,[1] for the purpose of receiving additional evidence, and at said times and places afforded all interested parties an opportunity to be heard on the proposed marketing agreement and the proposed order; and

Whereas, after such hearings and after the tentative approval on the 10th day of March 1939, by the Secretary, of a marketing agreement, handlers of more than 50 percent of the volume of milk covered by such order, which is marketed within the Omaha-Council Bluffs marketing area, refused or failed to sign such tentatively approved marketing agreement relating to milk; and

Whereas, the Secretary determined on the 27th day of March 1939, said determination being approved by the President of the United States on the 28th day of March 1939, that said refusal or failure tends to prevent the effectuation of the declared policy of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), and that this order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area and is approved or favored by over 92 percent of the producers voting in a referendum who, during the month of November 1938, said month being determined by the Secretary to be a representative period, were engaged in the production of milk for sale in the Omaha-Council Bluffs marketing area; and

Whereas, the Secretary of Agriculture has found and proclaimed the period August 1919–July 1929 to be the base period to be used in connection with ascertaining the purchasing power of milk sold in the Omaha-Council Bluffs marketing area; and

Whereas, the Secretary of Agriculture herewith finds that a pro-rata assessment on handlers at a rate not to exceed 2 cents per hundredweight on all milk received from producers during each delivery period will provide funds necessary for the proper administration of this order; and

SEC. 935.0 *Findings.* Whereas, the Secretary finds upon the evidence introduced at the said public hearings:

1. That all milk which is sold in the marketing area is handled in the current of interstate commerce or so as directly to burden, obstruct, or affect interstate commerce in milk and its products;

2. That the minimum prices fixed in this order will, over a period of time, tend to give milk sold in the marketing area a purchasing power with respect to articles that producers buy equivalent to the pur-

---

*Section 935.0 to and including Sec. 935.11 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C. § 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937) 7 U. S. C. § 601 et seq. (Supp. IV 1938).

[1] 4 F. R. 476 DI.

chasing power of such milk in the base period;

3. That the fixing of such prices does not have for its purpose the maintenance of prices to producers above the level which is declared in the act to be the policy of Congress to establish;

4. That this order regulates the handling of milk in the same manner as and is applicable only to handlers specified in a marketing agreement upon which hearings have been held; and

5. That the issuance of this order and all of its terms and conditions will tend to effectuate the declared policy of the act.

Now, therefore, the Secretary of Agriculture, pursuant to the authority vested in him by said act, hereby orders that such handling of milk sold in the Omaha-Council Bluffs marketing area as is in the current of interstate commerce or as directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in conformity to and in compliance with the terms and conditions hereinafter set forth.

SEC. 935.1 *Definitions*—(a) *Terms.* The following terms used herein shall have the following meanings:

(1) The term "Omaha-Council Bluffs marketing area," hereinafter called the "marketing area," means the territory within the corporate limits of the cities of Omaha, Nebraska, and Council Bluffs, Iowa; the territory within Kane, Lake, Garner, and Lewis Townships in Pottawattamie County, Iowa; and the territory within East Omaha, Florence, Union, Benson, McHugh, Moorehead, McArdle, Loveland, Ralston, Ashland, and May precincts in Douglas County, Nebraska; and the territory within Gilmore, Highland, and Bellevue Townships in Sarpy County, Nebraska.

(2) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(3) The term "producer" means any person, irrespective of whether any such person is also a handler, who produces milk which is received at the plant of a handler from which milk is disposed of in the marketing area. This definition shall be deemed to include any person who produces milk which a cooperative association causes to be diverted from the plant of a handler from which milk is disposed of in the marketing area, to a plant from which no milk is disposed of in the marketing area.

(4) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion of which milk is disposed of as milk in the marketing area, and who, on his own behalf or on behalf of others, engages in such handling of milk as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall be deemed to include a cooperative association which causes milk to be delivered from a producer to a handler, or causes milk of a producer to be delivered to a plant from which no milk is disposed of in the marketing area, for the account of such cooperative association and for which such cooperative association collects payment.

(5) The term "market administrator" means the agency, which is described in Sec. 935.2, for the administration hereof.

(6) The term "delivery period" means the current marketing period beginning with the first to, and including the 15th day of each month, and from the 16th to, and including, the last day of each month.

(7) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(8) The term "Secretary" means the Secretary of Agriculture of the United States.

(9) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have and to be exercising full authority in the sale of milk of its members.

SEC. 935.2 *Market administrator*—(a) *Designation.* The agency for the administration hereof shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) *Powers.* The market administrator shall:

(1) Administer the terms and provisions hereof;

(2) Report to the Secretary complaints of violation of the provisions hereof.

(c) *Duties.* The market administrator shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(2) Pay, out of the funds provided by Sec. 935.9, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for herein, and surrender the same to his successor or to such other person as the Secretary may designate;

(4) Unless otherwise directed by the Secretary, publicly disclose to handlers and producers, the name of any person who, within 10 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to Sec. 935.5 or (b) made payments pursuant to Sec. 935.8; and

(5) Promptly verify the information contained in the reports submitted by handlers.

SEC. 935.3 *Classification of milk*—(a) *Basis of classification.* Milk of a producer which a cooperative association causes to be delivered to a plant from which no milk is disposed of in the marketing area, for the account of such cooperative association and for which such cooperative association collects payment, and milk received by each handler, including milk produced by him, if any, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) *Classes of utilization.* The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk, plain or flavored, containing more than 1 percent of butterfat which is disposed of in the form of milk and all milk not accounted for as Class II milk or Class III milk;

(2) Class II milk shall be all milk used to produce cream which is disposed of in the form of cream for consumption as cream, except milk the skim milk of which is disposed of as Class I milk;

(3) Class III milk shall be (a) all milk used to produce a milk product other than that specified in Class II, and (b) all milk accounted for as actual plant shrinkage but not to exceed 3 percent of the total receipts of milk from producers.

(c) *Interhandler and nonhandler sales.* Milk sold or delivered by a handler, which is not a cooperative association, to another handler, and milk sold or delivered by a handler to a person who is not a handler but who distributes milk or manufactures milk products, shall be classified as Class I milk: *Provided,* That if the selling handler on or before the 5th day after the end of the delivery period furnishes to the market administrator a statement which is signed by the buyer and seller that such milk was disposed of as Class II milk or Class III milk, such milk shall be classified accordingly, subject to verification by the market administrator.

(d) *Sales of a cooperative association which is a handler.* Milk caused to be delivered from a producer to a handler by a cooperative association, for the account of such cooperative association, and for which such cooperative association collects payment, shall be ratably apportioned among the receiving handler's total Class I, Class II, and Class III milk. Milk caused to be delivered by such cooperative association to a plant from which no milk is disposed of in the marketing area, shall be classified as Class I milk: *Provided,* That if such cooperative association, on or before the 5th day after the end of the delivery period, furnishes to the market administrator a statement which is signed by the buyer and seller

that such milk was disposed of as Class II milk or Class III milk, such milk shall be classified accordingly, subject to verification by the market administrator.

SEC. 935.4 *Minimum prices*—(a) *Class prices.* Except as set forth in paragraph (b) of this section, each handler shall pay, at the time and in the manner set forth in Sec. 935.8, not less than the following prices for milk received at such handler's plant as follows:

(1) Class I milk—$2.05 per hundredweight;

(2) Class II milk—$1.50 per hundredweight;

(3) Class III milk—The price per hundredweight which shall be calculated by the market administrator as follows:

Multiply by 3.8 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture, for the delivery period during which such milk is received, plus or minus 0.95 cent per hundredweight for each 1 cent that such average price of butter is above or below 20 cents, and add 15 cents.

(b) *Sales outside the marketing area.* The price to be paid to producers by a handler for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be such price as the market administrator ascertains is being paid by processors, in the market where such milk is disposed of, for milk of equivalent use.

(c) *Sales of diverted milk.* The prices to be applied to milk caused to be delivered by a cooperative association which is a handler to a plant from which no milk is disposed of in the marketing area, shall be the prices set forth in paragraphs (a) and (b) of this section.

SEC. 935.5 *Reports of handlers*—(a) *Periodic reports.* On or before the 5th day after the end of each delivery period each handler shall, with respect to milk or cream which was during such delivery period (a) received from producers, (b) received from handlers, (c) produced by such handler, and (d) received from any other source, report to the market administrator, in the detail and form prescribed by the market administrator, as follows:

(1) The receipts at each plant from producers who are not handlers;

(2) The receipts at each plant from any other handler, including any handler who is also a producer;

(3) The quantity, if any, produced by such handler;

(4) The receipts at each plant from any other source; and

(5) The respective quantities of milk which were disposed of, including sales to other handlers, for the purpose of classification pursuant to Sec. 935.3 (a), (b), and (c).

(b) *Reports as to producers.* Each handler shall report to the market administrator, as follows:

(1) Within 10 days after the market administrator's request, with respect to any producer for whom such information is not in the files of the market administrator, and with respect to a period or periods of time designated by the market administrator, (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which deliveries were made; and

(2) As soon as possible after first receiving milk from any producer, (a) the name and address of such producer, (b) the date upon which such milk was first received, and (c) the plant at which the milk of such producer was received.

(c) *Reports of payments to producers.* Each handler shall submit to the market administrator on or before the 20th day after the end of each delivery period his producer pay roll for such delivery period which shall show for each producer (a) the net amount of the payment to such producer with the prices, deductions, and charges involved, and (b) the total delivery of milk with the average butterfat test thereof.

(d) *Reports of cooperative associations.* On or before the 5th day after the end of each delivery period, each cooperative association which is a handler shall report to the market administrator the quantity of milk of any producer which it causes to be delivered to a plant from which no milk is disposed of in the marketing area.

(e) *Verification of reports.* Each handler, including a cooperative association which is a handler, shall make available to the market administrator or his agent (a) those records which are necessary for the verification of the information contained in the reports submitted in accordance with this section, and (b) those facilities which are necessary for the sampling, weighing, and testing of the milk of each producer.

SEC. 935.6 *Handlers who are also producers.* (a) With respect to each handler who is also a producer:

(1) The market administrator shall exclude from the computations made pursuant to Sec. 935.7 (a) the quantity of milk disposed of by such handler: Provided, That where any such handler has purchased or received milk from other producers, the value of the milk purchased or received shall be computed under Sec. 935.7 (a) as follows: The quantity of such milk shall be ratably apportioned among such handler's total Class I, Class II, and Class III milk (after excluding purchases, if any, from other handlers) and multiplied by the Class I, Class II, and Class III prices, respectively.

(2) The market administrator shall consider as Class III milk any milk disposed of in bulk by any such handler to another handler operating a bottling or processing plant. If such buying handler disposes of such milk for other than Class III purposes, the market administrator shall add to the total value of milk, computed pursuant to Sec. 935.7 (a), the difference between (a) the value of such milk at the Class III price and (b) the value according to its actual usage.

SEC. 935.7 *Determination of uniform prices to producers*—(a) *Computation of the value of milk for each handler.* For each delivery period the market administrator shall compute, subject to the provisions of Sec. 935.6, the value of milk disposed of by each handler, which was received from producers by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to Sec. 935.4, and (b) adding together the resulting values of each class.

(b) *Computation of the value of milk diverted by a cooperative association.* For each delivery period the market administrator shall compute the value of milk of producers which a cooperative association causes to be delivered to a plant from which no milk is disposed of in the marketing area by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to Sec. 935.4 and (b) adding together the resulting values in each class.

(c) *Computation and announcement of the uniform price.* For each delivery period the market administrator shall compute and announce the uniform price per hundredweight of milk as follows:

(1) Combine into one total the respective values of milk, computed pursuant to paragraphs (a) and (b) of this section for each handler who made the reports prescribed by Sec. 935.5 and who made the payments prescribed by paragraphs (c) and (d) of Sec. 935.8;

(2) Add the amount of cash balance in the producer-settlement fund;

(3) Divide the result by the total quantity of milk represented in the sum obtained pursuant to subparagraph (1) of this paragraph;

(4) Subtract not less than 4 cents nor more than 5 cents per hundredweight of milk for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports and payments, or delinquencies in payment by handlers. This result shall be known as the uniform price for such delivery period for milk of producers containing 5.8 percent butterfat; and

(5) On or before the 6th day after the end of each delivery period, notify all handlers, and make public announcement of these computations, of the uniform price per hundredweight of milk, and of the Class III price.

SEC. 935.8 *Payments for milk*—(a) *Time and method of payment.* On or before the 10th day after the end of each delivery period such handler shall pay each producer, for milk received during the delivery period which was not caused to be delivered by a cooperative association, for the account of such cooperative association and for which such cooperative association re-

ceives payment, an amount of money representing not less than the total value of such milk, at the uniform price per hundredweight, computed pursuant to Sec. 935.7 (c) and subject to the butterfat differential set forth in paragraph (f) of this section.

(b) *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as "the producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (c), (d), and (g) of this section and out of which he shall make all payments to handlers pursuant to paragraphs (e) and (g) of this section.

(c) *Payments to the producer-settlement fund.* On or before the 8th day after the end of each delivery period each handler shall pay, subject to the provisions of paragraph (d) of this section, to the market administrator the amount by which the total value of the milk received by him from producers during the delivery period is greater than the amount obtained by multiplying the hundredweight of milk received from producers by such handler by the uniform price.

(d) *Payments made through a cooperative association.* Each handler, with respect to milk which is caused to be delivered to him from producers by a cooperative association for the account of such cooperative association and for which such cooperative association collects payment, shall make payment to such cooperative association at not less than the class prices set forth in Sec. 935.4, and subject to the provisions of Sec. 935.3 (d) and to the butterfat differential set forth in paragraph (f) of this section, for the utilization value of such milk. Such cooperative association shall pay to the market administrator the amount by which the utilization value of such milk, and of the milk of each producer which it causes to be delivered to a plant from which no milk is disposed of in the marketing area, is greater than the amount obtained by multiplying the hundredweight of all such milk by the uniform price.

(e) *Payments out of producer-settlement fund.* On or before the 10th day after the end of each delivery period, the market administrator shall pay to each handler for payment to producers, with respect to milk which was not caused to be delivered to such handler by a cooperative association, for the account of such cooperative association and for which such cooperative association collects payments, the amount, if any, by which the total value of such milk received from producers by such handler is less than the amount obtained by multiplying the hundredweight of such milk received from producers by such handler by the uniform price. On or before the 10th day after the end of each delivery period, the market administrator shall pay to a cooperative association which is a handler, for payment to producers, the amount, if any, by which the total value of milk of producers caused to be delivered to a handler and to a plant from which no milk is disposed of in the marketing area by such cooperative association is less than the amount obtained by multiplying the hundredweight of such milk by the uniform price. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 10th day after the end of each delivery period has not received the balance of such reduced payment from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(f) *Butterfat differential.* If any handler has received from any producer, during the delivery period, milk having an average butterfat content other than 3.8 percent, such handler shall add to the uniform price for such producer for each one-tenth of 1 percent of average butterfat content in milk above 3.8 percent not less than, or shall deduct from the uniform price for such producer for each one-tenth of 1 percent of average butterfat content in milk below 3.8 percent not more than 3 cents per hundredweight if the average price of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, is less than 30 cents, 3½ cents if such average price of butter is 30–34.9 cents, or 4 cents if such average price of butter is more than 34.9 cents.

(g) *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or out of the producer-settlement fund pursuant to paragraphs (c), (d), and (e) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (e) of this section, the market administrator shall, within 5 days make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

SEC. 935.9 *Expense of administration*—(a) *Payments by handlers.* As his pro-rata share of the expense of administration hereof, each handler, with respect to all milk received from producers during the delivery period, shall pay to the market administrator on or before the 10th day after the end of the delivery period that amount per hundredweight, and not to exceed 2 cents per hundredweight, which is announced on or before the 8th day after the end of the delivery period by the market administrator, subject to review by the Secretary. As its pro-rata share of the expense of administration hereof, a cooperative association, which is a handler, shall pay to the market administrator on or before the 10th day after the end of the delivery period, with respect to the milk of any producer which it causes to be delivered to a plant from which no milk is disposed of in the marketing area, an amount per hundredweight equivalent to that required to be paid by other handlers pursuant to this paragraph.

(b) *Suits by the market administrator.* The market administrator may maintain a suit in his own name against any handler for the collection of such handler's pro-rata share of expense set forth in this section.

SEC. 935.10 *Effective time, suspension, and termination of order*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to paragraph (b) of this section.

(b) *Termination of order.* The Secretary may terminate or suspend this order whenever he finds that this order obstructs or does not tend to effectuate the declared policy of the act.

This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty of the market administrator.* If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and de-

liver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions hereof, the market administrator or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

SEC. 935.11 *Liability*—(a) *Liability of handlers.* The liability of the handlers hereunder is several and not joint, and no handler shall be liable for the default of any other handler.

Now, therefore, H. A. Wallace, Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 31st day of March 1939, and declares this order to be effective on and after the 5th day of April 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1113; Filed, April 1, 1939; 12:43 p. m.]

OMAHA-COUNCIL BLUFFS SALES AREA

SUSPENSION OF THE LICENSE FOR MILK

Whereas, R. G. Tugwell, Acting Secretary of Agriculture, issued, on February 19, 1934, a license for milk—Omaha-Council Bluffs Sales Area, which license became effective on February 23, 1934, and was amended June 1, 1934, June 16, 1934, and November 16, 1934; and

Whereas, the Secretary has determined to suspend said license, as amended;

Now, therefore, H. A. Wallace, Secretary of Agriculture of the United States of America, pursuant to the powers and functions vested in the Secretary by the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, hereby suspends the aforementioned license, as amended, for milk—Omaha-Council Bluffs Sales Area, said suspension to become effective as of 11:59 p. m., c. s. t., the 4th day of April 1939.

This order of suspension shall in no way affect any obligations which have arisen, or which may hereafter arise, in connection with, by virtue of, or pursuant to said license, as amended, provided such obligations were incurred prior to the effective date of this suspension, nor shall this order of suspension be deemed to waive any violation of said license, as amended, which may have occurred prior to this suspension.

In witness whereof, I, H. A. Wallace, Secretary of Agriculture of the United States, have executed this suspension in duplicate and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 31st day of March 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1114; Filed, April 1, 1939; 12:42 p. m.]

SUGAR DIVISION

[G. S. Q. R. Series 6, No. 1, Rev. 1 [1]]

PART 821—SUGAR QUOTAS

SUGAR CONSUMPTION REQUIREMENTS AND QUOTAS FOR THE CALENDAR YEAR 1939

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1937, approved September 1, 1937, I, H. A. Wallace, Secretary of Agriculture, in order to carry out the powers vested in me by the said act, do hereby make, prescribe, publish, and give public notice of these regulations, which shall have the force and effect of law and shall remain in force and effect until amended or superseded by orders or regulations hereafter made by the Secretary of Agriculture.

SEC. 821.21 *Consumption requirements for 1939.* It is hereby determined, pursuant to Section 201 of the Sugar Act of 1937 (hereinafter referred to as the "act"), that the amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1939 is 6,755,386 short tons of sugar, raw value. (Sec. 201, 50 Stat. 904; 7 U. S. C., Sup. IV, 1111)

SEC. 821.22 *Quotas for domestic areas*—(a) *Revised quotas.* There are hereby established, pursuant to section 202 of the said act, for domestic sugar-producing areas, for the calendar year 1939, the following quotas:

Area:	*Quotas in terms of short tons, raw value*
Domestic beet sugar	1,566,719
Mainland Cane sugar	424,727
Hawaii	948,218
Puerto Rico	806,642
Virgin Islands	9,013

(Sec. 202, 50 Stat. 905; 7 U. S. C., Sup. IV, 1112)

SEC. 821.23 *Other quotas*—(a) *Revised quotas.* There are hereby established, pursuant to section 202 of the said act, for foreign countries and the Commonwealth of the Philippine Islands, for the calendar year 1939, the following quotas:

Area:	*Quotas in terms of short tons, raw value*
Commonwealth of the Philippine Islands	1,041,023
Cuba	1,932,343
Foreign countries other than Cuba	26,701

(Sec. 202, 50 Stat. 905; 7 U. S. C., Sup. IV, 1112)

SEC. 821.24 *Proration of quota for foreign countries other than Cuba*—(a) *Revised prorations.* The quota for foreign countries other than Cuba is hereby prorated, pursuant to section 202 of the said act, among such countries as follows:

Country:	*Prorations in Pounds*
Argentine	15,592
Australia	218
Belgium	314,817
Brazil	1,280
British Malaya	28
Canada	603,520
China & Hongkong	308,191
Colombia	286
Costa Rica	22,033
Czechoslovakia	281,649
Dominican Republic	7,133,147
Dutch East Indies	226,114
Dutch West Indies	7
France	187
Germany	125
Guatemala	358,238
Haiti, Republic of	985,833
Honduras	3,671,753
Italy	1,874
Japan	4,288
Mexico	6,452,184
Netherlands	233,046
Nicaragua	10,933,214
Peru	11,888,543
Salvador	8,780,522
United Kingdom	375,102
Venezuela	310,209
Sub-total	52,902,000
Unallotted reserve	500,000
Total	53,402,000

(Sec. 202, 50 Stat. 905; 7 U. S. C., Sup. IV, 1112)

SEC. 821.25 *Direct consumption portion of quotas*—(a) *Domestic areas.* The quotas established in Sec. 821.22 hereof for the following listed areas may be filled by direct consumption sugar not in excess of the following amount for each such area:

Area:	*Amount of direct consumption sugar in terms of short tons, raw value*
Hawaii	29,616
Puerto Rico	126,033
Virgin Islands	0

(b) *Other areas.* The quotas established in Sec. 821.23 hereof for the fol-

[1] 3 F.R. 3171 DI.

lowing listed areas may be filled by direct consumption sugar not in excess of the following amount for each such area:

Area:	*Amount of direct consumption sugar in terms of short tons, raw value*
Commonwealth of the Philippine Islands	80,214
Cuba	375,000

(Sec. 207, 50 Stat. 907; 7 U. S. C., Sup. IV, 1117)

SEC. 821.26 *Liquid sugar quotas.* There are hereby established, pursuant to section 208 of the said act, for foreign countries, for the calendar year 1939, quotas for liquid sugar as follows:

Country:	*In terms of wine gallons of 72% total sugar content*
Cuba	7,970,558
Dominican Republic	830,894
Other foreign countries	0

(Sec. 208, 50 Stat. 908; 7 U. S. C., Sup. IV, 1118)

SEC. 821.27 *Restrictions on marketing and shipment.* (a) For the calendar year 1939, all persons are hereby forbidden, pursuant to section 209 of the said act, from bringing or importing into the continental United States from the Territory of Hawaii, Puerto Rico, the Virgin Islands, the Commonwealth of the Philippine Islands, or any foreign country, any sugar or liquid sugar after the quota for such area, or the proration of any such quota, has been filled.

(b) For the calendar year 1939, all persons are hereby forbidden, pursuant to section 209 of the said act, from shipping, transporting or marketing in interstate commerce, or in competition with sugar or liquid sugar shipped, transported, or marketed in interstate or foreign commerce, any sugar or liquid sugar produced from sugar beets or sugarcane grown in either the domestic beet sugar area or the mainland cane sugar area after the quota for such area has been filled. (Sec. 209, 50 Stat. 908; 7 U. S. C., Sup. IV, 1119)

SEC. 821.28 *Inapplicability of quota regulations.* These regulations (Secs. 821.21–821.27) shall not apply to (1) the first 10 tons, raw value, of sugar or liquid sugar imported from any foreign country, other than Cuba; (2) the first 10 tons, raw value, of sugar or liquid sugar imported from any foreign country, other than Cuba, for religious, sacramental, educational, or experimental purposes; (3) liquid sugar imported from any foreign country, other than Cuba, in individual sealed containers not in excess of one and one-tenth gallons each; or (4) any sugar or liquid sugar imported, brought into, or produced or manufactured in, the United States for the distillation of alcohol, or for livestock feed, or for the production of livestock feed. (Sec. 212, 50 Stat. 909; 7 U. S. C., Sup. IV, 1122)

SEC. 821.29 *Recission of prior regulations.* These regulations (Secs. 821.21–821.28) shall supersede General Sugar Quota Regulations Series 6, No. 1, issued December 23, 1938.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the District of Columbia, city of Washington, this 31st day of March 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39–1116; Filed, April 1, 1939; 12:44 p. m.]

TITLE 14—CIVIL AVIATION

CIVIL AERONAUTICS AUTHORITY

[Amendment No. 7 of Civil Air Regulations]

CREATING A NEW METHOD FOR REGISTRATION OF AIRCRAFT

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 17th day of March 1939.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205 (a) and 601 (a) of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under said Act, the Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

1. Part 03 of the Civil Air Regulations is hereby stricken in its entirety.

2. Part 00 of the Civil Air Regulations is hereby stricken and the following new Part 00 is inserted in lieu thereof:

"PART 00. AIRCRAFT REGISTRATION

Sec.

00.0 Application. Application for the registration of an aircraft shall be made on form No. 501, and shall be accompanied by proper documentary evidence of the applicant's ownership of the aircraft sought to be registered.

00.1 Duration. The registration and certificate issued pursuant thereto shall be of sixty days' duration and, unless the holder thereof is otherwise notified by the Authority within such period, shall continue in effect indefinitely thereafter except that it shall immediately expire upon the date (1) the ownership of the aircraft is transferred, (2) the aircraft is registered under the laws of any foreign country, (3) the registration of the aircraft is canceled at the written request of the owner, or (4) the aircraft is totally destroyed or scrapped.

00.2 Display. The registration certificate shall be carried in the aircraft at all times and shall be presented for inspection upon the demand of any authorized officer or employee of the Civil Aeronautics Authority.

00.3 Transferability. A registration certificate is not transferable except as is provided in § 00.4.

00.4 Interim operation. Upon the transfer of ownership of an aircraft registered as an aircraft of the United States, the purchaser, if a citizen of the United States, may operate such aircraft without registration for a period of 60 days from the date of transfer, if the following conditions are complied with:

(a) On the date of the transfer of ownership of such aircraft the registered owner thereof shall execute and endorse the registration certificate in the manner provided thereon and deliver such certificate to the purchaser.

(b) On the date of transfer the purchaser shall mail to the Civil Aeronautics Authority at Washington, D. C., an application for registration on form No. 501.

00.5 Invalidation. Any registration of an aircraft by the Civil Aeronautics Authority shall be null and void if at the time of registration, (a) the aircraft was registered under the laws of any foreign country; or (b) the person registered as owner was not the true and lawful owner of the aircraft; or (c) the person registered as owner was not a citizen of the United States as defined in section 1 (13) of the Civil Aeronautics Act of 1938, or the interest of such person in the aircraft was created by any transaction not entered into in good faith but for the purpose of avoiding, with or without the knowledge of the registered owner, the provision of the Civil Aeronautics Act of 1938, prohibiting the registration of an aircraft in the name of a person not a citizen of the United States.

00.6 Surrender of Certificate. Upon the suspension or revocation, expiration or invalidation of a registration, the holder of the registration certificate shall surrender such certificate to the Civil Aeronautics Authority or to an authorized inspector thereof upon demand by either."

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39–1108; Filed, April 1, 1939; 11:00 a. m.]

[Amendment No. 9 of the Civil Air Regulations]

REQUIRING ADDITIONAL MARKING LIGHTS ON FREE BALLOONS

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 31st day of March 1939.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205 (a) and 601 (a) of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under said Act, the

Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

1. Section 60.63 of Part 60 of the Civil Air Regulations is hereby amended so that the same will read as follows:

"60.63 *Balloon lights.* Between sunset and sunrise a free balloon shall display one steady white light and one flashing red light, both lights to be visible all around the horizon at a distance of at least 2 miles. The white light shall be located not less than 20 feet below the car and the red light shall be located not less than 7, nor more than 10, feet below the white light. Between sunset and sunrise a fixed balloon, or airship, shall carry 3 lights—red, white, and red—in a vertical line, one over the other, visible at least 2 miles. The top light shall be not less than 20 feet below the car, and the lights shall be not less than 7, nor more than 10, feet apart."

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39-1109; Filed, April 1, 1939; 11:00 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

SECURITIES AND EXCHANGE COMMISSION

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

AMENDMENT OF RULE U-3D-9

Acting pursuant to the authority conferred on it by the Public Utility Holding Company Act of 1935, particularly Sections 3 (d) [c. 687, sec. 3, 49 Stat. 810; 15 U. S. C., Sup. III, 79c] and 20 (a) [c. 687, sec. 20, 49 Stat. 833; 15 U. S. C., Sup. III, 79t] thereof, the Securities and Exchange Commission deems it necessary and appropriate in the public interest and for the protection of investors and consumers, and not contrary to the purposes of said Act, to amend, and does hereby amended Rule U-3D-9 [Sec. 15. U-3D-9] to read as follows:

SEC. 15.U-3D-9 (*Rule U-3D-9*).—*Exemption of Certain Securities Issued in Connection with Installment Sales of Electric and Gas Equipment.*[1] (a) As used in this rule.

"Qualified service company" means—

(1) a company which is temporarily exempt under Rule U-13-3 [Sec. 15 U-13-3], or

(2) an approved mutual service company or a company found by the Commission to meet the requirements of Section 13 (b) [c. 687, sec. 13, 49 Stat. 825; 15 U. S. C., Sup. III, 9m] of the Act, *provided* that such approval or finding was based on an application or declaration on Form U-13-1 [Sec. 17. U-13-1] specifically including financial services of the sort covered by this rule;

"Financial institution" means a bank, an insurance company, or a company regularly engaged in refinancing installment paper, but does not include an associate company or affiliate of the public-utility company concerned in the exempt transaction;

"Installment paper" means any note, contract, or other evidence of indebtedness covering part or all of the purchase price, not exceeding $15,000, of standard electrical or gas appliances.

(b) Every public-utility company or subsidiary thereof or qualified service company shall be exempt from the obligations, duties, and liabilities which would otherwise be imposed on it as a subsidiary of a registered holding company by the provisions of Section 6 (a) [c. 687, sec. 6, 49 Stat. 814; 15 U. S. C., Sup. III, 79f] with respect to

(1) the issue or sale by it to an associate qualified service company or to a financial institution of a note or draft which is, and at all time will be, secured by a pledge of installment paper having a principal amount still unpaid at least equal to the unpaid principal amount of such note or draft, and

(2) the guarantee by it (by endorsement or otherwise) of any installment paper in connection with the sale, discount, pledge or other disposition of such paper to an associate qualified service company or to a financial institution.

(c) Every qualified service company shall be exempt from the obligations, duties and liabilities which would otherwise be imposed on it as a subsidiary of a registered holding company by the provisions of Section 9 (a) [c. 687, sec. 9, 49 Stat. 817; 15 U. S. C., Sup. III, 79i] with respect to the acquisition of securities issued or sold to it pursuant to the exemption provided by paragraph (b) of this rule.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1110; Filed, April 1, 1939; 11:12 a. m.]

[1] Effective March 28. 1939.

TITLE 22—FOREIGN RELATIONS

DEPARTMENT OF STATE

EXPORTATION OF ARMS, ETC., TO SPAIN

APRIL 1, 1939.

The Secretary of State announces that, in view of the fact that the President has, by proclamation, revoked proclamation No. 2236 issued May 1, 1937,[1] in regard to the state of civil strife which existed in Spain, and has declared that the Joint Resolution of Congress approved January 8, 1937, has ceased to apply, the rules and regulations governing the exportation of arms, ammunition, and implements of war to Spain and governing the carriage of armament, arms, ammunition, and implements of war on American vessels engaged in commerce with Spain which were prescribed by the Secretary of State on May 1, 1937,[2] and which were embodied in Part VII of the fifth edition of the *Laws and Regulations Administered by the Secretary of State Governing the International Traffic in Arms, Ammunition, and Implements of War and Other Munitions of War,* ceased to be effective upon the issuance of the Proclamation of April 1, 1939.

CORDELL HULL.

[F. R. Doc. 39-1127; Filed, April 3, 1939; 11:54 a. m.]

SOLICITING AND RECEIVING OF CONTRIBUTIONS FOR USE IN SPAIN

APRIL 1, 1939.

The Secretary of State announces that, in view of the fact that the President has, by proclamation, revoked proclamation No. 2236 issued May 1, 1937,[1] in regard to the state of civil strife which existed in Spain, the rules and regulations governing the soliciting and receiving of contributions for use in Spain which were prescribed by the Secretary of State on May 5, 1937,[3] ceased to be effective upon the issuance of the Proclamation of April 1, 1939, except with respect to offenses committed prior to such revocation. All registrations with the Secretary of State of persons engaged in the solicitation and collection of funds for use in Spain automatically expired on the date of the President's Proclamation of April 1, 1939.

CORDELL HULL.

[F. R. Doc. 39-1126; Filed, April 3, 1939; 11:54 a. m.]

TITLE 36—PARKS AND FORESTS

NATIONAL PARK SERVICE

CATOCTIN RECREATIONAL DEMONSTRATION AREA

SUBSIDIARY REGULATIONS

The following subsidiary regulations, issued under the authority of the Rules and Regulations approved by the Secretary of the Interior April 19, 1937,[4] have been recommended by the project man-

[1] 2 F. R. 776 (923 DI).
[2] 2 F. R. 794 (945 DI).
[3] 2 F. R. 795 (945 DI).
[4] 2 F. R. 754 (893 DI).

ager and approved by the Director of the National Park Service, and are in force and effect within the boundaries of the Catoctin Recreational Demonstration Area.

SEC. 20.24 (a) *Fishing.* (1) Little Hunting Creek is closed to fishing. All other waters are open to fishing.

(2) The fishing season shall be from April 1 to June 30, inclusive. Fishing is permitted only between the hours of 7:00 A. M. and 7:00 P. M. from April 1 to April 30, inclusive, and between the hours of 7:00 A. M. and 8:00 P. M. from May 1 to June 30, inclusive.

(3) Fishing with other than artificial flies for bait is prohibited.

(4) The limit of catch of trout shall be 5 fish per person per day.

(b) *Repeal.* All previous subsidiary regulations for Catoctin Recreational Demonstration Area are hereby repealed.

Approved, March 25, 1939.

[SEAL] ARNO B. CAMMERER,
Director.

[F. R. Doc. 39-1106; Filed, April 1, 1939; 10:31 a. m.]

TITLE 43—PUBLIC LANDS

OFFICE OF SECRETARY OF INTERIOR; DIVISION OF GRAZING

REVOCATION OF GRAZING DISTRICT NOTICES

MARCH 28, 1939.

Under authority of Departmental orders, pursuant to section 1 of the act of June 28, 1934 (48 Stat. 1269), notices were published as follows for hearings to consider the establishment of grazing districts:

Date approved	Date published	State affected
July 20, 1934	July 26, 1934	Colorado.
July 26, 1934	July 30, 1934	California.
July 31, 1934	August 6, 1934	California.
July 31, 1934	August 6, 1934	New Mexico.
July 31, 1934	August 7, 1934	Oregon.
July 31, 1934	August 5, 1934	Utah.
August 3, 1934	August 9, 1934	Oregon.
August 22, 1934	September 2, 1934	Montana.
September 1, 1934	September 8, 1934	Utah.[1]
September 1, 1934	September 8, 1934	Utah.[2]
September 7, 1934	September 13, 1934	Idaho.
September 7, 1934	September 14, 1934	Colorado.
September 7, 1934	September 21, 1934	Montana.
September 18, 1934	September 22, 1934	Utah.
September 22, 1934	September 27, 1934	New Mexico.
September 25, 1934	October 2, 1934	New Mexico.
September 25, 1934	October 1, 1934	Utah.[3]
September 25, 1934	October 1, 1934	Utah.[4]
September 25, 1934	September 29, 1934	Utah.
September 25, 1934	October 2, 1934	Colorado.
October 2, 1934	October 9, 1934	Colorado.
December 1, 1934	December 15, 1934	Arizona.
	December 17, 1934	California.
	December 14, 1934	Colorado.
	December 11, 1934	Idaho.
	December 7, 1934	Montana.
	January 8, 1935	Nevada.
	December 14, 1934	New Mexico.
	December 14, 1934	North Dakota.
	December 9, 1934	Oregon.
	December 14, 1934	South Dakota.
	December 10, 1934	Utah.
	December 10, 1934	Wyoming.
July 6, 1936	July 30, 1936	Idaho, Nevada, and Wyoming.
August 20, 1936	September 5, 1936	Arizona.
October 20, 1936	October 29, 1936	Oregon.
November 16, 1936	December 12, 1936	Colorado.
October 20, 1937	November 2, 1937	Arizona.

[1] Box Elder Grazing District.
[2] Sevier-Escalante Grazing District.
[3] Moab Grazing District.
[4] San Juan Grazing District.

The publication of these notices had the effect, in accordance with the provisions of the aforesaid act, of withdrawing all vacant, unappropriated, and unreserved public land within the exterior boundaries of the proposed districts from all forms of entry and settlement.

The above-listed withdrawals, having served their purpose, are hereby revoked.

HARRY SLATTERY,
Acting Secretary of the Interior.

[F. R. Doc. 39-1105; Filed, April 1, 1939; 10:29 a. m.]

BUREAU OF RECLAMATION

[No. 50]

YUMA IRRIGATION PROJECT

PUBLIC NOTICE OF ANNUAL WATER CHARGES[1]

FEBRUARY 17, 1939.

1. *Annual operation and maintenance charges for lands under public notice, Reservation Division.* The annual operation and maintenance charge for the irrigation season of 1939, and thereafter until further notice, against all lands of the Reservation Division of the Yuma Irrigation Project, Arizona-California, under public notice, shall be a minimum of two dollars and twenty cents ($2.20) per irrigable acre, whether water is used or not, which charge shall permit the delivery of not to exceed 5 acre-feet of water per acre on certain sandy areas shown on the list attached to public notices No. 31 dated April 14, 1931, No. 40 dated March 1, 1935, No. 43 dated February 17, 1936, No. 47 dated March 5, 1937, and No. 49 dated March 28, 1938, and of not to exceed 4 acre-feet of water per acre on all other lands of this division; additional water shall be furnished at the rate of one dollar ($1.00) per acre-foot. Where, in the opinion of the Superintendent, it may be done without interference with other project requirements, upon written request filed in advance by the water users, water will be furnished free of charge for reclaiming lands by the removal of alkali either by growing rice or similar crops or by the usual leaching methods; and water in excess of the minimum amount herein provided, which is to be used for the growing of fertilizer crops of no commercial value or which is to be used for the purpose of depositing silt upon the land, shall be furnished free of charge. All lands for which free water was served during the year 1938 will not again be served free water until evidence satisfactory to the project superintendent has been made that the water so granted free of charge during the year 1938 was applied to the land in sufficient quantities over a period of not less than 3 months, in which event water shall again be served free of charge provided the results accomplished during the preceding irrigation season were not satisfactory. All operation and maintenance charges shall be due and payable on March 1 of each year for the preceding irrigation season to the Agent-Cashier, Bureau of Reclamation, Yuma, Ariz.

2. *Annual water rental charges for other lands, Reservation Division.* Lands not under public notice that can be irrigated from the present distribution system without further construction expense by the Bureau may secure irrigation water under water rental contracts at a rate of two dollars and twenty cents ($2.20) per irrigable acre, which charge will permit the delivery of not to exceed 4 acre-feet of water per acre, and additional water will be delivered at the rate of one dollar ($1.00) per acre-foot. All charges due under water rental contracts are payable in advance of the delivery of water. The minimum charge as specified shall be paid before any water is delivered during the current or subsequent seasons and

[1] Act of June 17, 1902, 32 Stat., 388, as amended or supplemented.

all additional or excess water over the minimum of 4 acre-feet shall be paid for when ordered and prior to delivery. Refund will be made for excess water paid for but not used.

3. *Annual water rental charge for lands in the Valley Division not under public notice.* Lands in the Valley Division not under public notice which can be irrigated from the present distribution system without further construction expense by the United States may secure irrigation water during the calendar year 1939 and until further notice under water rental contracts at a rate of three dollars ($3.00) per irrigable acre, which charge will permit the delivery of four acre-feet per acre. Additional water furnished will be charged for at the rate of one dollar ($1.00) per acre-foot, payable in advance of delivery. All town lots that can be served under the present system may secure water under annual water rental contracts at the rate of five dollars ($5.00) a lot and one dollar ($1.00) for each additional lot in the same township, considering the maximum lot to be not over sixty (60) feet in width. All payments under water rental contracts are due and payable in advance of the delivery of water to the Agent-Cashier, Bureau of Reclamation, Yuma, Arizona.

HARRY SLATTERY,
Under Secretary of the Interior.

[F. R. Doc. 39-1104; Filed, April 1, 1939; 10:29 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commission.

[Docket Nos. 611-FD to 617-FD]

BITUMINOUS COAL PRODUCERS BOARD FOR DISTRICT NO. 4, COMPLAINANT, VS. THE BLUE SHAFT COAL CO., WARNER COLLIERIES COMPANY, THE POWHATAN MINING COMPANY, THE JEFFERSON COMPANY, HACKATHORN & MYERS, H. S. GANDER COAL COMPANY, THE NEW FORSYTHE COAL COMPANY, DEFENDANTS

NOTICE AND ORDER FOR HEARING

The Bituminous Coal Producers Board for District No. 4, the complainant above-named, having filed with the Commission separate complaints against each of the defendants above-named, code members within said District No. 4, alleging that the said defendants have wilfully violated the provisions of the Bituminous Coal Code by their failure to pay assessments levied against them by the said District Board in accordance with the Bituminous Coal Act of 1937 and Order No. 10 [1] of the Commission, and praying for the revocation of defendants' membership in the Bituminous Coal Code, all of which is more fully set forth in the respective written formal complaints filed in each of the above-entitled matters;

Now, therefore, It is hereby ordered:

1. That a hearing upon each of the said complaints, before an Examiner to be designated by the Commission, shall be held in the Hearing Room of the Commission, Walker Building, Washington, D. C., on the 10th day of May, 1939, commencing at the hour of 10 o'clock, a. m., at which interested parties will be given an opportunity to be heard.

The Secretary of the Commisson is forthwith directed to cause personal service of a copy of this Notice and Order for Hearing to be made upon each of the defendants above-named; to mail copies of this Notice and Order for Hearing to the Secretary of each District Board and to the Consumers' Counsel; and to cause copy of the same to be published in the FEDERAL REGISTER.

By order of the Commission.
Dated this 31st day of March 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

[F. R. Doc. 39-1124; Filed, April 3, 1939; 11:26 a. m.]

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

AN ORDER FOR AND NOTICE OF FINAL HEARING IN THE MATTER OF THE ESTABLISHMENT OF RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN THE DISTRICTS NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, AND 22

Whereas, Pursuant to Orders Nos. 244, 248 and 250 [1] of the Commission, the District Boards for each of the several districts proposed and submitted to the Commission rules and regulations incidental to the sale and distribution of coal by code members within their respective districts, as provided by Section 4, II, (a) of the Act, and

Whereas, Pursuant to hearings heretofore held in this Docket No. 15, the Commission made Findings of Fact and Conclusions relating to said proposals, and approved or modified said proposals for the purpose of coordination, as provided by Section 4, II, (a) of the Act, and

Whereas, The Commission, by its Orders Nos. 253, 254, 255, 256, 259, 260, 261, 264 and 266, directed the District Boards for each of Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23 to coordinate the said rules and regulations, as approved by the Commission for the purpose of coordination, and

The District Boards for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22 having reported to the Commission that they were unable to coordinate said rules and regulations as to all of their common consuming market areas, and

The Commission, in lieu of said District Boards Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, pursuant to Section 6 (a) of the Act and Order No. 268 [2] of the Commission, having coordinated the rules and regulations incidental to the sale and distribution of coal by code members of the said districts, and

Whereas, The rules and regulations as coordinated by the Commission for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, which coordinated rules and regulations are on file in the Office of the Secretary of the Commission, Washington, D. C., and by this reference incorporated herein and made a part hereof, will be offered at a final hearing, as hereinafter provided, as the proposals of the Commission for said Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22.

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That notice be, and the same is hereby given, that the Commission will, in its Hearing Room in the City of Washington, D. C., hold a final hearing commencing at 10 a. m., on the 17th day of April, 1939, for the purpose of receiving evidence to enable the Commission to establish rules and regulations incidental to the sale and distribution of coal by code members within Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, as provided by Section 4, II (b) of the Bituminous Coal Act of 1937.

2. That at said hearing the aforesaid rules and regulations as coordinated by the Commission for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 22, respectively, will be offered as proposals, and all interested parties will be afforded an opportunity to present evidence relating to the consistency or inconsistency of said proposed rules and regulations with the requirements of Section 4 of the Act, and as to their conformity or non-conformity to the standards of fair competition as established by Section 4 of the Act, and as to the reasonableness or unreasonableness of said proposed rules and regulations, and such other evidence as would enable the Commission to prescribe and establish reasonable rules and regulations in conformity with the procedure and standards set forth in Section 4 of the Bituminous Coal Act of 1937. Said proposals shall be subject to such modification as may be warranted by the evidence adduced at the hearing. Upon the close of said hearing, the Commission will make its final determinations.

3. That the record of all proceedings heretofore held in this Docket No. 15 pertaining to the matter of the proposals of rules and regulations incidental to the sale and distribution of coal by Code

[1] 2 F. R. 1109 (1325 DI).

[1] 3 F. R. 1894, 1989, 2058 DI.

[2] 4 F. R. 1286 DI.

Members submitted by the several District Boards upon which the Commission's prior approval of the rules and regulations for the purpose of coordination was based, will be made a part of the record of this final hearing.

4. The Secretary of the Commission be and he is hereby directed to cause a copy of this Order for and Notice of Hearing, together with a copy of the proposals made by the Commission, to be mailed to each code member, and shall cause copies thereof to be published forthwith in the FEDERAL REGISTER and to cause copies thereof to be mailed to the Consumers' Counsel, to the Secretary of each District Board, and to all parties who have entered their appearances in this proceeding, and to cause copies thereof to be made available to interested parties at the Office of the Secretary of the Commission, Washington, D. C., and at each Statistical Bureau of the Commission.

By order of the Commission.
Dated this 1st day of April, 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

PROPOSED MARKETING RULES AND REGULATIONS FOR DISTRICTS NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, AND 22, AS COORDINATED BY THE COMMISSION PURSUANT TO ORDER NO. 268

Section I—Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, That the term "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the effective date of the order, such effective date to be not more than fifteen (15) days from the date upon which the order was accepted.

5. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

6. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

7. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

8. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

9. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

10. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

11. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

12. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Coal Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

13. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

14. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

15. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

16. The terms "reconsignment" and/or "diversion" as used herein shall mean a change in the original consignee or in the destination or route.

17. The term "transportation facilities" means railroad cars, vessels, trucks, or any other facilities used or useful in the transportation of coal.

18. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

19. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

20. "Cargo shipment" is a quantity of coal loaded into a vessel for transportation via water.

21. "Bunker coal" or "vessel fuel" is that coal used aboard a vessel for consumption thereon.

22. "Coal" as used herein shall mean bituminous coal.

23. The term "bituminous coal" includes all bituminous, semibituminous, and subbituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

24. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II—Sales Agents

1. All sales of coal by sales agents of code members or their agents or authorized representatives, and the terms and conditions of such sales shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. All appointments of sales agents by code members or their agents or authorized representatives shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

3. Each code member shall require compliance by all his sales agents and agents and employees of sales agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

4. Each code member shall require all his sales agents clearly to set forth upon any offer, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such code member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above-mentioned forms shall also disclose the fact of agency relationship with the code member principal.

5. (A) Every contract for the appointment of a sales agent by code members or by agents or authorized representatives of code members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the code member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the code member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the termination or rescission of any sales agency contract, the code member principal shall make a re-

port thereof to the Statistical Bureau, or Bureaus, within ten (10) days after the date of such termination or rescission.

6. (A) As to all coal sold by a code member otherwise than through a sales agent or through an employee regularly employed as a salesman by the code member at his principal place of business or at a regularly established sales office, such code member shall, not later than the twentieth (20th) day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the twentieth (20th) day of each month, each code member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or at a regularly established sales office of the sales agent.

(C) Not later than the twentieth (20th) day of each month, each code member shall also file with the Statistical Bureau, or Bureaus a statement showing the names and addresses of distributors to whom the code member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

7. Within twenty (20) business days after the effective date of these rules and regulations each code member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the code member shall notify the Coal Commission within ten (10) business days after such change takes place.

8. A list showing the names and addresses of sales agents and the code members for whom such agents act shall be published monthly by the Coal Commission.

9. All agency contracts and other information filed by code members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the code member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

10. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no code member or sales agent of a code member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent:

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the code member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

11. No commission shall be paid to a sales agent by a code member where a partial or complete ownership, direct or indirect, or other control exists between the purchaser and the sales agent: *Provided,* however, that a commission may be allowed and paid in a case where the Coal Commission has determined that such ownership or control is bona fide, is not established to secure an indirect price reduction, and is not within the prohibitions of Paragraphs 11 and 12 of Section 4, Part II (i) of the Act.

12. When any commissions are paid to a sales agent on a tonnage basis, the code member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

13. No code member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

14. Subject to further order of the Coal Commission, the amount of commission to be paid by a code member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III—Discounts

1. Code Members or their sales agents may allow discounts on sales of coal only to persons registered by the Coal Commission as authorized to receive such discounts, and such discounts shall not exceed the maximum discounts or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

2. Except as expressly authorized in rules and regulations or orders promulgated by the Coal Commission, no Code Member or sales agent may grant or allow any discount or reduction, including any allowance for shipping on a Government Bill of Lading, from the applicable minimum prices upon the sale of coal to any person, including agencies of the Federal Government or agencies of State or local governments.

3. Every sale of coal to a distributor upon which a discount is allowed shall be made subject to the express condition that the distributor is authorized to accept and retain such discount.

Section IV—Limitations of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no code member or sales agent of the code member shall enter in to any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided, however,* That contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, or in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

2. Options and quotations for the sale of coal may be given for a period not exceeding fourteen (14) days. No options or quotations may be given at a price less than the applicable minimum price in effect at the time of the giving of the option or quotation. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised or the quotation accepted at the time of such increase, the option or quotation thereupon shall become null and void: *Provided, however,* That in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Every quotation or option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

4. All options must be made or confirmed in writing. Every code member or his sales agent shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V—Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the code member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:

(a) If the price herein named is f. o. b. any point other than the originating mine, such price shall be increased or decreased by the amount and at the time of any change in the published freight rate included in such price and becoming effective during the period of the order.

(b) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing: *Provided, however,* That this provision does not apply to coal purchased for and used as railroad locomotive fuel. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

(c) The coal shipped pursuant to this order is sold and purchased upon the following condition:

(1) This coal shall be used in the plant or plants at the destination or destinations named herein and for the use stated herein;

(2) In case the coal is applied by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal for the use to which it is actually applied.

(d) If the shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of this order shall not be delivered.

3. In any case where a sale of coal is made by a sales agent of a code member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (b) of this section without first securing the consent of his code member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of a spot order or the date of the written confirmation thereof, the code member or his sales agent shall file with the Statistical Bureau, or Bureaus, a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau, or Bureaus, in the same manner.

5. All spot orders for the sale of coal, the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at time of delivery as established at the time of the making of the spot order.

Section VI—Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine and the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding twenty (20) percent of such estimated tonnage.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local governments in case the terms required to be submitted in a bid or offer for such contract are in conflict with such provisions.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contracts for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. All contracts for the sale of coal the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at the time of delivery as established at the time of the making of the contract.

5. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other forms of fuel and energy, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

6. Any change in the terms of a contract shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

7. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: *Provided, however,* That a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

8. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937, and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

(b) If the price herein named is f. o. b. any point other than the originating mine, such price shall be increased or decreased by the amount and at the time of any change in the published freight rate included in such price and becoming effective during the period of the contract.

(c) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing: *Provided, however,* That this provision does not apply to coal purchased for and used as railroad locomotive fuel. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

(d) The coal shipped pursuant to this contract is purchased upon the following conditions:

(1) This coal shall be used in the plant or plants at the destination or destinations named herein and for the use stated herein;

(2) In case the coal is applied by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal for the use to which it is actually applied.

9. In any case where a contract is made by a sales agent of a code member, such sales agent shall not exercise the rights of the seller as defined in Item 8 (c) of this section without first securing the consent of the code member producing such coal to be confirmed in writing.

10. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the code and such contract shall be invalid and unenforceable.

11. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII—Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before the twentieth day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or on or before the twentieth (20th) day of the month following delivery, or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, stamps, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made by cash on delivery or on or before the twentieth (20th) day of the month following delivery, at supplier's option.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepaid stations as published in current railway tariffs or on shipments to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved: *Provided, however,* That a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditors' composition shall be filed with the Statistical Bureau within ten (10) business days from the date of the making thereof.

(L) This section shall not be construed as requiring Code Members to extend to each purchaser the full credit terms herein permitted, but each Code Member shall be free to determine as to each purchaser whether credit should be extended, and the terms of credit, if allowed, provided such terms are not more favorable than as herein provided.

Section VIII—Use of Coal Analyses

1. No analysis of coal shall be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. Any analysis of the coal of a code member made by or on behalf of a consumer and accepted by the code member as the basis for an adjustment of price under any contract or order shall be filed by the code member with the District Board and the Statistical Bureau, by the 20th day of the month following the month in which the adjustment is made.

5. No agreement or order for the sale of coal, proposed by a Code Member, made upon a penalty or a premium and penalty basis, shall be entered into or accepted by a Code Member unless the analysis upon which the premium and penalty clause is based has been previously filed as required by rule 1 of this section. Such analysis shall be accompanied by a statement setting forth in full the terms of the premium and penalty provisions of the proposed contract or order.

6. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: *Provided,* That where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX—Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within ten (10) business days from the date of such resale, a statement giving the following information:

(a) Name of consignee.
(b) Address of consignee.
(c) Original destination of the coal.
(d) Name of Code Member.
(e) Originating mine.
(f) The grade and size of coal shipped.
(g) Price at which coal sold.
(h) Reasons for the refusal.
(i) Facts resulting from the investigation of the complaint.
(j) Name of ultimate purchaser upon resale.
(k) Address of purchaser upon resale.
(l) Ultimate destination of the coal.
(m) Price received by the seller upon resale.
(n) Amount of commission, if any, paid upon the resale.
(o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.
(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall on or before the 20th day of each month furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments made during the preceding calendar month, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X—Substandard Preparation or Quality

1. Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional and extraordinary expense in accepting the shipment, the Code Member or his sales agent with the prior approval of the code member, may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error, and may accept payment therefor at less than the applicable minimum price: *Provided,* That in each such case the Code Member shall within five (5) business days after granting such allowance file with the District Board and the Statistical Bureau of the Coal Commission a verified statement giving the following information:

(a) The name and address of the consignee and the reason for the request for the allowance.
(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.
(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.
(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI—Substitutions

1. No substitution may be made, upon any spot order of contract, of any grade or size of coal taking a minimum price higher than the price specified in such spot order or contract, except upon the following conditions:

(a) The proposed substitution shall not be an express or implied condition of the order or contract.
(b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.
(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.
(d) The substitution shall be acceptable to the purchaser of the coal and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.
(e) Such substitution may be made only with the approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.
(f) A monthly report of substitution permits shall be mailed by Code Members to the office of their District Board. The Commission may from time to time publish the essential facts as to all substitution permits granted.
(g) In each case of coal shipped under a substitution permit the invoice shall specifically show the permit number and the size and grade of coal substituted.

Section XII—Miscellaneous

General. 1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code; *Provided,* That the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size,

price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising. 1. No deductions or allowance from invoice prices shall be granted by any code member or his sales agent to any purchaser for advertising.

2. Code members (or their agents or representatives) either individually or collectively, with or without (financial) participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a code member, his agent or representative, for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for buyer's account. 1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal confiscated or lost in transit. 1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of marketing rules and regulations. 1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

[F. R. Doc. 39–1123; Filed, April 3, 1939; 11:26 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

DETERMINATION OF THE SECRETARY OF AGRICULTURE, APPROVED BY THE PRESIDENT OF THE UNITED STATES, WITH RESPECT TO AN ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE ST. LOUIS, MISSOURI, MARKETING AREA

Whereas, the Secretary of Agriculture, pursuant to the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Market Agreement Act of 1937, having reason to believe that the execution of an amendment to a tentatively approved marketing agreement, as amended, and the issuance of an amendment to an order, as amended, both of which regulate the handling of milk in the St. Louis, Missouri, marketing area, would tend to effectuate the declared policy of the act, gave, on the 9th day of December 1938, notice of a public hearing to be held on the 14th day of December 1938 in St. Louis, Missouri, on a proposed amendment of said tentatively approved marketing agreement, as amended, and of said order, as amended, and at said time and place conducted a public hearing at which all interested parties were afforded an opportunity to be heard on the said proposed amendment, which public hearing was reopened on the 2d day of February 1939,[1] for the purpose of receiving additional evidence and for the purpose of providing all persons with an opportunity to present oral arguments for or against the amendment of said tentatively approved marketing agreement, as amended, and of said order, as amended; and

Whereas, after said hearing and after the tentative approval by the Secretary, on March 10, 1939, of a marketing agreement, as amended, handlers of more than fifty percent of the volume of milk covered by such proposed order, as amended, which is marketed within the St. Louis, Missouri, marketing area, refused or failed to sign such tentatively approved marketing agreement, as amended, relating to milk;

Now, therefore, the Secretary of Agriculture, pursuant to the authority vested in him by said act, hereby determines:

(1) That the refusal or failure of said handlers to sign said tentatively approved marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act;

(2) That the issuance of the proposed order, as amended, is the only practical means, pursuant to such policy, of advancing the interests of producers of milk which is produced for sale in said area; and

(3) That the issuance of the proposed order, as amended, is approved or favored by over two-thirds of the producers who participated in a referendum conducted by the Secretary and who, during the month of November 1938, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in said area.

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, has executed this determination in duplicate and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 27th day of March 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

Approved:

FRANKLIN D ROOSEVELT,
The President of the United States.

Dated March 28, 1939.

[F. R. Doc. 39–1112; Filed, April 1, 1939; 12:42 p. m.]

[1] 4 F. R. 476 DI.

DETERMINATION OF THE SECRETARY OF AGRICULTURE APPROVED BY THE PRESIDENT OF THE UNITED STATES WITH RESPECT TO A PROPOSED ORDER REGULATING THE HANDLING OF MILK IN THE OMAHA-COUNCIL BLUFFS, MARKETING AREA

Whereas, the Secretary of Agriculture, pursuant to the terms and provisions of Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, having reason to believe that the execution of a marketing agreement and the issuance of an order with respect to the handling of milk in the Omaha-Council Bluffs, Marketing Area would tend to effectuate the declared policy of said act, gave, on the 3rd day of December, 1938, notice of a hearing to be held on the 15th day of December, 1938, at Omaha, Nebraska, on a proposed marketing agreement and a proposed order, said hearing being reopened at Omaha, Nebraska, on the 2nd day of February, 1939,[1] for the purpose of receiving additional evidence, and at said times and places conducted public hearings at which all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order; and

Whereas, after said hearings and after the tentative approval of a marketing agreement by the Secretary on the 10th day of March, 1939, handlers of more than fifty (50) per centum of the volume of milk covered by such proposed order, which is marketed within the Omaha-Council Bluffs, Marketing Area, refused or failed to sign such tentatively approved marketing agreement;

Now, therefore, the Secretary of Agriculture, pursuant to the power and authority vested in him by said act, hereby determines:

(1) That the refusal or failure of said handlers to sign said tentatively approved marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) That the issuance of the proposed order is the only practical means, pursuant to such policy, of advancing the interest of producers of milk which is marketed in said area; and

(3) That the issuance of the proposed order is approved or favored by over two-thirds of the producers who, during the month of November, 1938, said month being determined by the Secretary to be a representative period, were engaged in the production of milk for sale in said area, and who participated in the referendum conducted by the Secretary from March 16th to 21st, 1939.

In witness whereof, H. A. Wallace, Secretary of Agriculture, has executed this determination in duplicate, and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto, in the city of

Washington, District of Columbia, this 27th day of March, 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

Approved:

FRANKLIN D ROOSEVELT
President of the United States.

Date March 28, 1939.

[F. R. Doc. 39-1117; Filed, April 1, 1939; 12:43 p. m.]

Food and Drug Administration.

IN THE MATTER OF PUBLIC HEARING FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: TOMATO PUREE, TOMATO PASTE, TOMATO CATSUP, TOMATO JUICE

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO TOMATO PUREE

General Statement

1. In pursuance of the authority of subsection (e), Section 701 of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U. S. C. 371 (e)], the Secretary of Agriculture, on his own initiative, published, on December 15, 1938, which appeared on page 3012 of the FEDERAL REGISTER, a notice of a public hearing to be held on January 16, 1939, in Room 3036, Department of Agriculture, South Building, Independence Avenue, between 12th and 14th Streets, SW., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: tomato puree, tomato paste, tomato catsup, tomato juice. This notice contained a proposal in general terms for a reasonable definition and standard of identity for each of such foods. The notice designated John McDill Fox as the presiding officer for the hearing. Thereafter, a public hearing was held at the time and place therein designated, and John McDill Fox served as presiding officer. (R., pp. 1, 3; Government's Exhibit No. 1.)

2. At said hearing the presiding officer announced (R., p. 3) that he would first hold a hearing on tomato puree.

3. In pursuance of that announcement, he did so hold a hearing on tomato puree, and continued the hearing with reference to the other foods, to dates subsequently to be announced.

4. The hearing on tomato puree was concluded and all parties were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. The presiding officer, therefore, makes this report. He suggests that the Secretary make, on the basis of the substantial evidence contained in the record, the finding of fact herein contained, with the conclusion herein suggested, and as so found, to order the promulgation of the regulation suggested herein.

6. The proposal, as appeared in the FEDERAL REGISTER, on December 15, 1938, concerned itself *inter alia* with a proposed reasonable definition and standard of identity for the food product commonly known as tomato puree. It read as follows:

Tomato puree is the product obtained from one of the following optional tomato ingredients:

(1) Clean, mature red tomatoes which are sound, or with imperfections removed by hand trimming; or

(2) Number (1) above with clean, sound tomato trimmings; or

(3) Number (1) above with clean, sound pomace obtained as a byproduct in the manufacture of tomato juice; or

(4) Clean, sound tomato trimmings; or

(5) Clean, sound pomace obtained as a byproduct in the manufacture of tomato juice; or

(6) A mixture of numbers (4) and (5) above; by crushing and straining free from skins, seeds and cores, with or without the application of heat; and by evaporating to a minimum tomato solids content of ____ percent (to be fixed at a point between 8.37 and 10.5 percent); it may or may not contain the optional ingredient added salt; it is sealed in a container and processed by heat, before or after sealing, to prevent spoilage.

When optional tomato ingredient (2), (3), (4), (5) or (6) is used, that fact shall be stated on the label (form of declaration to be later specified).

7. Within the time so provided, various interested parties filed proposed findings of fact based on the evidence adduced at the hearing which, if granted, would modify the proposal originally printed in the FEDERAL REGISTER. These proposed findings of fact concerned (1) the name of the product; (2) the degree of concentration; (3) the method of removing imperfections; (4) the meaning of the term "red."

8. There was controversy with reference to the degree of concentration, and with reference to the necessity of the label declaration of optional ingredients.

9. The testimony described in detail what tomato puree was, and what was the background of the Department in setting previous advisory standards, and under the present act, the basis for presenting the proposals for the standards under such act.

Mr. Callaway, a Government witness, who is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Foods' Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department. It appears that he entered the Bureau of Chemistry of the Department of Agriculture in 1914; and except for a brief interruption for war service, has been continuously with the Department. During such time he had many occasions to observe the methods of manufacture of tomato puree in various plants operating in the eastern third of the United States, and likewikse had occasion to supervise the laboratory chemical examination of a great many samples of tomato puree.

As secretary of the Food Standards Committee of the Food and Drug Administration, he plans and directs field and laboratory investigations in order to develop the methods of manufacturing and the composition of various foods which are being studied with a view to standardization, receiving reports of field representatives, both analysts and inspectors, which reports he studies and correlates in order to facilitate their use. He also consults with representatives of the trade and with consumer organizations in a further effort to secure information helpful in the consideration of proposals leading to the standardization of food. (Transcript, pp. 9–12.)

The origin and history of the "Food Standards Committee" was then traced by the witness. From his testimony it appeared that prior to the passage of the Food and Drugs Act of 1906, there was no uniformity with respect to definitions and standards for various food products. The Association of Official Agricultural Chemists had, however, appointed a committee whose duty it was to formulate standards of purity for various food products. The Secretary of Agriculture took advantage of the services of this committee and was authorized by law at various times to do this.

With the passage of the Food and Drugs Act of 1906, the Secretary of Agriculture appointed an advisory committee, the members of which were selected from the Association of Official Agricultural Chemists and from the Association of State and National Food and Dairy Departments and from the Bureau of Chemistry. There was assigned to this Committee the task of promoting the making of food standards. This body functioned for a short time and finally ceased to exist in the latter part of 1907.

In 1913, the Association of American Dairy, Food and Drug Officials adopted a resolution urging the creation of a Food Standards Committee to take, in a way, the place of the committee which had functioned in the past. In response to this resolution, the Secretary, in 1913, created such a committee. It was called a Joint Committee on Food Standards and its members were selected three each from the Association of Dairy, Food and Drug Officials, the Association of Official

Agricultural Chemists and the Bureau of Chemistry of the United States Department of Agriculture. This committee functioned in an advisory capacity from its creation in 1913 until the passage of the Food, Drug, and Cosmetic Act of 1938. The new Food, Drug, and Cosmetic Act does not provide for a Food Standards Committee, but the valuable services rendered by the Food Standards Committee in the past prompted the Secretary of Agriculture to create a new Food Standards Committee. This new committee, of which the witness is secretary, is composed of six members, two from the Association of Dairy, Food and Drug officials, two from the Association of Official Agricultural Chemists, and two from the Food and Drug Administration of the Department of Agriculture.

The chief purpose of the Committee is to serve in an advisory capacity on food standards. This Committee meets at the call of the Chief of the Food and Drug Administration and studies factual information which had been collected by the Food and Drug Administration.

In addition, the Committee studies the official factory inspection reports which have been submitted by representatives of the Food and Drug Administration in the course of regular visits having to do with the inspection of various plants manufacturing food products in various parts of the country.

The Committee also studies the reports of chemical analysis of foods made by regularly authorized analysts of the Food and Drug Administration. It also confers with trade representatives, representatives of consumer organizations and trade associations in an attempt to secure all available information which will be helpful in the formulation of food standards.

On the basis of all information and evidence available, it assists the Food and Drug Administration in the formulation of proposals leading toward the standardization of food.

Proposals to standardize tomato puree were made to the Standards Committee in 1915. At this time, it was represented to the Committee by various members of the trade that there was a great deal of variation in the methods then used for preparing this product, particularly with respect to the character of the raw materials used and the final concentration of the product. The Committee did not feel that the product as sold at this time was of sufficiently definite composition for them to undertake its standardization under the existing law.

In 1920, the National Canners Association recommended to the Foods Standards Committee that a definition of standards be adopted for the product known as tomato puree and suggested that the definition should include three types of puree. They suggested that these three types of puree should be defined as being manufactured in the same way but with different degrees of concentration.

The suggestions were that provision be made for a so-called light puree with not less than 6.3 percent solids and medium puree with not less than 8.37 percent solids, and a heavy puree with not less than 12 percent solid. It was suggested that the definition state that these products were obtained by their evaporation of screened tomatoes with or without the addition of salt.

The Foods Standards Committee considered these suggestions and drew up tentative standards which in 1921 were submitted to the trade for comment. These suggested definitions of a light, medium and heavy puree as made from whole tomatoes and other products designated as light, medium and heavy puree which were made from tomato by-products. Their suggestions and comments were received from interested members of the industry. These comments were considered by the Foods Standard Committee but the Committee deferred action pending a more complete investigation.

In 1927, several interested members of the industry again requested that definitions and standards be adopted. The request called attention to the unsatisfactory situation existing in the industry, particularly with respect to the use of tomato by-products in the manufacture of this product and to the lack of any definite degree of concentration.

No immediate action was taken by the Committee, but it was agreed that standardization was desirable, and that definitions and standards would be formulated when sufficient evidence was available.

At that time, the Committee was faced with the situation that the product was referred to both as tomato puree and as tomato pulp, some part of the industry using one designation and some the other.

In 1931, the Food Standards Committee formulated a proposed standard which recognized both the name, "tomato puree" and "tomato pulp." This proposed definition and standard was submitted along with other proposals on tomato products to the trade for comment and was considered along with other proposals at a public hearing which was held by the Food Standards Committee in April 1932.

At this hearing, considerable evidence was submitted by interested members of the trade and following this hearing, the Committee adopted several definitions and standards for tomato products which included a definition and standard for the product known as "tomato puree" or "tomato pulp." This advisory definition of the standard read as follows:

Tomato puree, tomato pulp, the product resulting from the concentration of the screened or strained fleshy, liquid portions of ripe tomatoes except those portions from skin and core trimmings, with or without the addition of salt. The product contains not less than 8.37 percent of tomato solid.

This was accompanied by an explanatory note:

"Tomato puree" should not be confused with "puree from trimmings," a term used to note a product commonly unconcentrated, sometimes added in the canning of tomatoes.

This standard was promulgated a few months thereafter by the Secretary of Agriculture for the guidance of the industry and for the guidance of officials of the United States Department of Agriculture and enforcement of the Food and Drugs Act of 1906.

The witness testified further that he himself had recently conducted a survey of factory methods as to the food commonly known as "tomato puree". That official representatives of the Food and Drug Administration visited at least sixty-one factories manufacturing tomato puree in various parts of the United States. They observed the processes, they consulted with the officials of the companies and they secured available information as to the acceptable and usual processes used by the various manufacturing companies. That this information was incorporated in official reports which were part of the files of the Food and Drug Administration. The reports have been reviewed by the witness, and that the witness prepared a written summary of such reports. The witness testified that he had the original reports with him in the Hearing Room. The Presiding Officer required that the original reports be produced, be marked for identification, and be made available for inspection and for the purposes of cross examination. This having been done, a written summary of such official reports was admitted in evidence, which appears as Government's Exhibit No. 2. It showed the principal sections producing tomato puree. These were grouped by locality in five separate groups, one group showing samples taken in Maryland, New Jersey, Connecticut, Pennsylvania, Delaware, New York and Virginia; the second group, in Indiana, Ohio, Kentucky and Wisconsin; the third, Louisiana, Mississippi, Texas; the fourth, Colorado, Utah; the fifth, California. Of these sixty-one factories, two were in Connecticut, ten in New York State, five in Delaware, five in Maryland, four in Pennsylvania, six in New Jersey, eight in Indiana, six in Colorado, four in Utah, and eleven in California. These factories varied in size and in output of puree, from large ones, having a national distribution, to small ones with a very limited output. They covered factories using different types of raw material, and employing variations in their method for preparing tomato puree.

In the sixty-one factories visited in connection with the survey, the following processes for puree, with respect to

ingredients, were noted or reported to be used by the manufacturers: 42 packing tomato puree made from whole tomatoes only; seven using whole tomatoes and the peels, skins, cores, etc., secured in preparing tomatoes for canning; one using the residue from the preparation of tomato juice entirely; three using the residue from preparing tomato juice; three using the residue from preparing tomato juice mixed with skins, peels and cores; seven using skins, peels and cores only. Several of the plants made more than one type of puree. Twenty-six of the firms visited reported adding salt for seasoning to the puree.

A further investigation on the composition of tomato puree was conducted. The results of analysis of samples of products labelled and sold as tomato puree or tomato pulp which were collected and examined by representatives of the Food and Drug Administration in 1934 to August 1938, the object of the examination being to ascertain the total solids. The method employed was the method of the Association of the Official Agricultural Chemists. The witness testified that by "total solids" is meant the non-volatile part of a product, in this case, tomato puree, that is, the part of the puree which is not driven off by heating. By tomato solids is meant that part of the total solids derived from the tomato exclusive of any added material. The ordinary added material is the salt. The amount of salt added, as a rule, is about a half of one percent, though occasionally, it exceeds this amount. The advisory standard adopted by the Standards Committee some years ago based the concentration of tomato puree on the "tomato solid" content. Total solids are determined by taking a weighed portion of the puree and heating it to drive off volatile material. The remaining residue is weighed and the percentage calculated. Since the temperature at which the product is heated may cause variation in the results, the Association of Official Agricultural Chemists has given exact details as to how total solids in tomato products shall be determined. This method is described in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", fourth edition, 1935, page 499, section 16.

Where it is desired to determine tomato solids, it is necessary to make a determination of the added salt and subtract this from the total solids. To do this the total amount of chlorine present is determined by the method described by the Association of Official Agricultural Chemists on page 500, section 22 of the book just described. This chlorine is calculated as sodium chloride. This gives the total salt in the sample. If this figure for total salt is subtracted from the total solids it will give what is commonly known as salt-free solid. This is not exactly the same thing as tomato solids, since a tomato contains small amounts of chlorine and when examined by the methods described will show a small amount of salt. Tomatoes contain amounts of salt calculated in this way ranging from .03 percent to .10 percent.

Since tomato puree represents a concentration of approximately two to one, the amount of salt in tomato puree will be approximately twice that in the raw tomato. The maximum amount of natural salt in tomato puree can be estimated as .20 percent. The tomato solids are determined by first extracting this estimated amount of natural salt from the total salt, giving the added salt. This subtracted from the total solids, gives the tomato solids.

Dr. Burton J. Howard, who entered the service of the Department of Agriculture in 1901 as a microscopist and whose service has been continuous ever since, testified in substantial accord with the evidence presented by Mr. Callaway. He, however, felt that the present advisory standard of 8.37 percent of solids was to be preferred although he testified that in his opinion a standard of identity would be reasonable and fair which would fix the point of concentration at any point between 8.37 and 10.5 percent. (R., p. 96.) Mr. Howard perfected the Howard Mould Count technique.

Mr. Oliver Grosvenor, an interested party, who had expressed an opinion in favor of retaining the present standard, also admitted on cross examination that any point of concentration between 8.37 and 10.5 might be reasonable. (R., p. 149.)

From the exhibits introduced, it would appear that a greater portion of the samples were above the old advisory standard.

Evidence was introduced that a great number of people buy tomato puree for remanufacture purposes, such as for use in soup and spaghetti and some buy their tomato puree on a contract basis and specifiy the specific gravity.

From all of the evidence, it would seem that tomato puree is a concentrated product. From all of the evidence, it would seem that in the growing of tomatoes, there may be a variation in tomato solids content; that some tomatoes with the lower limit (8.37) can be made a puree practically without concentration. Therefore, it would seem that while the evidence is that any tomato solid requirement between 8.37 and 10 percent would be reasonable, it is more reasonable to assume that tomato solids content should be fixed above a point where tomatoes naturally might have such a solid content. It would seem that there is a definite practice among many producers to make tomato puree from not only whole tomatoes but from tomato remains after a portion of the juice has been extracted, and from the clean seeds, cores and peels.

A word has been used with reference to this product which seems to attach an undue stigma to the product, that is, the word "trimmings." All of the parties testifying at the hearing objected to the word "trimmings." Consumers also object to the word. The word "byproduct" has been suggested. While the word is not strictly accurate, because it is used to denote part of the tomato, it would seem that it is a better word than "trimmings."

There is evidence in the record to the effect that all of these optional ingredients are part of the tomato. Nevertheless, from both esthetic and economic reasons, it would seem from the record that a consumer should know whether the food "puree" or "pulp" is made from whole tomatoes or is made from byproducts, and that honesty and fair dealing in the interest of consumers would require a label declaration disclosing such information.

From all the evidence in the record, it would seem that the words "tomato puree" and the words "tomato pulp" should be used interchangeably.

Therefore, the Presiding Officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order and promulgating the regulation hereinafter set forth.

Findings

1. *Clean.* Tomatoes used in the manufacture of tomato puree must be clean. (R., pp. 23, 41.)

2. *Red tomatoes.* Tomatoes used in the manufacture of tomato puree must be red or of a reddish variety of tomatoes. (R., pp. 23, 41.)

3. *Trimmed for rot.* In the preparation of tomatoes for the manufacture of puree, all rot and decayed portions of the tomatoes should be cut out and discarded. (R., pp. 23, 41.)

4. *Sound.* The tomatoes or parts of the tomatoes which go into the manufacture of puree must be sound. (R., pp. 23, 41.)

5. *Tomato ingredients.* Tomato puree is manufactured from the following raw-material ingredients: (R., p. 23.)

(1) Whole tomatoes;

(2) Byproducts of tomatoes, obtained in the process of canning tomatoes, consisting of clean, sound tomato flesh and liquid;

(3) Byproducts of tomatoes obtained in the manufacture of tomato juice, consisting of a tomato residue of the fleshy parts of the tomatoes and tomato liquid;

(4) Tomato puree may be made from any one of the above raw-material ingredients or any combination thereof.

6. *Manufacturing process.* Tomato puree is manufactured by crushing and straining clean, sound, whole, red tomatoes, or tomato byproducts obtained in the process of preparing canned tomatoes, or in the process of preparing tomato juice. The crushing and straining process is carried out in such a manner as to remove the seeds, skins, and cores of the tomato from the strained ma-

terial. The tomato material thus obtained is concentrated to a definite point and packed so as to prevent spoilage. (R., p. 25.)

7. *Concentrated product.* Tomato puree is a concentrated product. (R., p. 24.)

8. *Advisory standard.* Present advisory standard for tomato puree promulgated in 1932, fixed the minimum tomato-solid content at 8.37 percent. (R., p. 17.)

9. *Method for determining concentration.* (1) When total solids are to be determined for the purpose of the standard or for any legal purposes, the method to be employed is the method set forth by the "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 4th Edition, 1935, page 499, Section 16, "Total Solids tentative." (R., pp. 33, 42.)

(2) When salt-free solids are to be determined, sodium chloride is to be found by the method prescribed on page 500 of the book referred to in (1) above, under Section 22, "Sodium Chloride—Official." The amount of sodium chloride found is to be subtracted from the total solids found. The difference shall be considered to be the salt-free solids of the product. (R., pp. 34, 42.)

10. *Seasoning ingredients.* Salt is frequently used as a seasoning ingredient in tomato puree. (R., p. 25.)

11. *Synonymous terms.* The term "puree" and the term "pulp" are synonymous names for the same food. (R., pp. 93, 157.)

12. *Variety of tomatoes used.* Tomatoes used in the manufacture of tomato puree are tomatoes of a red variety. (R., pp. 41, 65, 96.)

13. *Minimum degree of concentration.* Tomato puree is a concentrated tomato product which should have a minimum tomato-solid content of 9 per cent salt-free solids, or a minimum concentration of 10 per cent total solids. (R., pp. 39, 42.)

14. *Labeling to indicate use of by-products.* When tomato puree is manufactured, in whole or in part, from peels and cores obtained as a by-product in the manufacture of canned tomatoes, or from juice and tomato residue obtained as a by-product in the manufacture of tomato juice, the source of the raw material ingredients used is to appear on the label.

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food commonly known as tomato puree is hereby suggested to be promulgated as a regulation:

Tomato Puree, Tomato Pulp—Identity; Labeling of Optional Ingredients. (a) Tomato Puree, Tomato Pulp, is the food prepared from one or any combination of two or all of the following optional ingredients:

(1) The liquid obtained from mature tomatoes of red varieties, with any unsoundness removed by trimming.

(2) The liquid obtained from tomato byproducts from the canning of tomatoes (consisting of clean, sound peelings and cores from tomatoes of red varieties, with or without the liquid draining therefrom during or after peeling and coring).

(3) The liquid obtained from the tomato byproduct from the extraction of tomato juice.

Such liquid is obtained by so straining such tomato material, with or without heating, as to exclude skins, seeds, and other coarse or hard substances. It is concentrated, and may be seasoned with salt. When sealed in a container it is so processed by heat, before or after sealing, as to prevent spoilage. It contains not less than 9 percent, but less than 25 percent, of salt-free tomato solids, as determined by the following method:

Determine total solids by the method prescribed on page 499 under "Total Solids—Tentative", and sodium chloride by the method prescribed on page 500 under "Sodium Chloride—Official", of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1933. Subtract the percent of sodium chloride found from the percent of total solids found; the difference shall be considered to be the percent of salt-free tomato solids.

(b) When optional ingredient (2) is present, in whole or in part, the label shall bear the statement "Made From—" (or "Made in Part from—", as the case may be) "Tomato Byproducts from Canning Tomatoes". When optional ingredient (3) is present, in whole or in part, the label shall bear the statement "Made From—" (or "Made in Part from—", as the case may be) "Tomato Byproduct from Extraction of Tomato Juice". If both such ingredients are present, such statements may be combined in the statement "Made from—" (or "Made in Part from—", as the case may be) "Tomato Byproducts from Canning Tomatoes and from Extraction of Tomato Juice". Wherever the name "Tomato Puree" or "Tomato Pulp" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion, and order, shall transmit such objection in writing to the Hearing Clerk. At the same time such interested persons shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to reply, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

Date: March 27, 1939.

[F. R. Doc. 39-1102; Filed, March 31, 1939; 3:15 p. m.]

IN THE MATTER OF PUBLIC HEARING FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: TOMATO PUREE, TOMATO PASTE, TOMATO CATSUP, TOMATO JUICE

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER RELATIVE TO TOMATO PASTE

General Statement

1. In pursuance of the authority of subsection (e), Section 701 of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U. S. C. 371 (e)], the Secretary of Agriculture, on his own initiative, published, on December 15, 1938, which appeared on page 3012 of the FEDERAL REGISTER, a notice of a public hearing to be held on January 16, 1939, in Room 3036, Department of Agriculture, South Building, Independence Avenue, between 12th and 14th Streets, S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: tomato puree, tomato paste, tomato catsup, tomato juice. This notice contained a proposal in general terms for a reasonable definition and standard of identity for each of such foods. The notice designated John McDill Fox as the presiding officer for said hearing. Thereafter, a public hearing was held at the time and place therein designated, and said John McDill Fox served as presiding officer. (Government's Exhibit No. 1.)

2. At such hearings the presiding officer announced that he would first hold a hearing on tomato puree.

3. Pursuant to that announcement, he did so hold a hearing on tomato puree, and continued the hearing with reference to the other foods, at dates subsequently to be announced.

4. On January 17, 1939, at 10:12 a. m. the hearing on tomato paste was convened and concluded at 9:10 p. m. the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. The presiding officer, therefore, makes this report and suggests that the

Secretary make, on the basis of the substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and as so found, to order the promulgation of the regulation suggested herein.

6. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as tomato paste. It read as follows:

Tomato paste is the product obtained from one of the following optional tomato ingredients:

(1) Clean, mature red tomatoes which are sound, or with imperfections removed by hand trimming; or

(2) Number (1) above with clean, sound tomato trimmings; or

(3) Number (1) above with clean, sound pomace obtained as a by-product in the manufacture of tomato juice; or

(4) Clean, sound tomato trimmings; or

(5) Clean, sound pomace obtained as a by-product in the manufacture of tomato juice; or

(6) A mixture of numbers (4) and (5) above; by crushing and straining free from skins, seeds and cores, with or without application of heat; and by evaporating to a minimum tomato solids content of _____ percent (to be fixed at a point between 22 and 26 percent); it may or may not contain one or more of the optional added ingredients:

(a) Sweet basil leaves.
(b) Oil of sweet basil.
(c) Salt.
(d) Sodium bicarbonate.

It is sealed in a container and processed by heat, before or after sealing, to prevent spoilage.

When optional tomato ingredient (2), (3), (4), or (6) or optional ingredient (d), is used, that fact shall be stated on the label (form of declaration to be later specified).

7. Within the time so provided, various interested persons filed proposed findings of fact, based upon the evidence adduced at the hearing, which if granted, would modify the proposal originally printed in the FEDERAL REGISTER. These proposed findings of fact concerned:

(1) the name of the product, (2) the determination of concentration based on total solids or free solids, (3) the use of the word trimmings, and (4) the necessity of declaring the presence of optional added ingredient, sodium bicarbonate.

8. There was controversy in the evidence with reference to the minimum degree of concentration, with reference to the necessity of a label declaration to indicate use of tomato by-products and with reference to the necessity of declaring the presence of optional added ingredient, sodium bicarbonate on the label.

9. The testimony described in detail what tomato paste was, and what was the background of the Department in setting previous advisory standards, and, under the present act, the basis of presenting the proposal for the standard under such act.

Mr. Callaway, a Government witness, who is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Foods Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department. It appears that he entered the Bureau of Chemistry of the Department of Agriculture in 1914; and except for a brief interruption for war service, has been continuously with the Department. During such time he had many occasions to observe the methods of manufacture of tomato paste in various plants operating in the eastern third of the United States, and likewise had occasion to supervise the laboratory chemical examination of a great many samples of tomato paste.

As secretary of the Food Standards Committee of the Food and Drug Administration, he plans and directs field and laboratory investigations in order to develop the methods of manufacturing and the composition of various foods which are being studied with a view to standardization, receiving reports of field representatives, both analysts and inspectors, which reports he studies and correlates in order to facilitate their use. He also consults with representatives of the trade and with consumer organizations in a further effort to secure information helpful in the consideration of proposals leading to the standardization of food.

The origin and history of the Food Standards Committee was then traced by the witness. From his testimony it appeared that prior to the passage of the Food and Drugs Act of 1906, there was no uniformity with respect to definitions and standards for various food products. The Association of Official Agricultural Chemists had, however, appointed a committee whose duty it was to formulate standards of purity for various food products. The Secretary of Agriculture took advantage of the services of this committee and was authorized by law at various times to do this.

With the passage of the Food and Drugs Act of 1906, the Secretary of Agriculture appointed an advisory committee, the members of which were selected from the Association of Official Agricultural Chemists and from the Association of State and National Food and Dairy Departments and from the Bureau of Chemistry. There was assigned to this committee the task of promoting the making of food standards. This body functioned for a short time and finally ceased to exist in the latter part of 1907.

In 1913, the Association of American Dairy, Food and Drug Officials adopted a resolution urging the creation of a Food Standards Committee to take, in a way, the place of the committee which had functioned in the past. In response to this resolution, the Secretary, in 1913, created such a committee. It was called a Joint Committee on Food Standards and its members were selected three each from the Association of Dairy, Food and Drug Officials, the Association of Official Agricultural Chemists and the Bureau of Chemistry of the United States Department of Agriculture. This committee functioned in an advisory capacity from its creation in 1913 until the passage of the Food, Drug, and Cosmetic Act of 1938. The new Food, Drug, and Cosmetic Act does not provide for a Food Standards Committee, but the valuable services rendered by the Food Standards Committee in the past prompted the Secretary of Agriculture to create a new Food Standards Committee. This new committee, of which the witness is secretary, is composed of six members, two from the Association of Dairy, Food and Drug Officials, two from the Association of Official Agricultural Chemists, and two from the Food and Drug Administration of the Department of Agriculture.

The chief purpose of the committee is to serve in an advisory capacity on food standards. This committee meets at the call of the Chief of the Food and Drug Administration and studies factual information which had been collected by the Food and Drug Administration.

In addition, the committee studies the official factory inspection reports which have been submitted by representatives of the Food and Drug Administration in the course of regular visits having to do with the inspection of various plants manufacturing food products in various parts of the country.

The committee also studies the reports of the chemical analysis of foods made by regularly authorized analysts of the Food and Drug Administration. It also confers with trade representatives, representatives of consumer organizations and trade associations in an attempt to secure all available information which will be helpful in the formulation of food standards.

On the basis of all information and evidence available, it assists the Food and Drug Administration in the formulation of proposals leading toward the standardization of food. It would appear that the question of a suitable standard for tomato paste was under consideration by the various food standards committees at various times for a number of years commencing about fifteen years ago. Final-

ly, in 1932, the advisory standard was adopted which read as follows:

Tomato paste, Salsa di Pomidoro, "Salsa," the product resulting from the concentration of screened or strained fleshy and liquid portion of ripe tomatoes, except those portions from skin and core trimming, with or without addition of salt and with or without addition of basil, the finished product contains not less than 22 percent of tomato solids. (R., p. 13.)

A recent survey was made for the Food and Drug Administration following the plans formulated by the witness and reports of this investigation were submitted and the results summarized. The original reports were present in the hearing room market for identification and made available for examination. In the course of the investigation 27 plants were visited. Of these 27 factories, 13 were in California, 2 in Utah, 4 in Indiana, 6 in New York, and 2 in Maryland. (R., p. 15.) These factories varied in size and output of tomato paste from large plants having national distribution to small ones having a very limited output and they covered factories using different types of raw material and employing certain variations in the method of preparing tomato paste. The same basic process is used.

A second investigation was made of the results of analyses of samples of products labeled or sold as tomato paste which were collected and examined by representatives of the Food and Drug Administration from 1934 to 1938. The official reports were present in the hearing room and made available for examination, and the exhibit, containing the analyses together with the summary, appears as Government's Exhibit No. 4. Total number of samples examined during this period were 367 and on all the samples collected, total solids were determined and on a certain number of the samples, chlorine was determined and calculated as salt, sodium chloride.

The method used for the determination of total solids was that described in the book entitled, "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", page 499, Section 16. Salt was determined by the method described in the same book, page 500, Section 22. (R., p. 22.) The results of the analysis of these samples are shown in Government's Exhibit No. 2, grouped by locality.

It would seem from the evidence of both the witness Callaway and other witnesses, that this product should be a product of heavy concentration. Originally it was sold principally to Italians or people of Italian descent but more lately it has attained widespread sale. It had always been of comparatively heavy concentration. However, competition in the product as it became more generally distributed, tended to a lower concentration, resulting in what some witnesses termed a degradation in the product. (R., pp. 193 to 200.)

Flavoring material sometimes is used and sometimes is not used. It would seem from the evidence (R., pp. 39–40) that if flavoring is used, that factor should be stated. There is no particular necessity, it would appear from the evidence, of going into the question of what the flavor is, other than what the manufacture might give, since the question of the exact nature of the flavor is a very complicated one, but a differentiation between the flavored and unflavored product should appear. (R., p. 139.)

The witness Callaway (R., pp. 29–30, 36–37) testified that the minimum concentration, if total solids are used as the basis of concentration, should be 26 percent, or if salt free solids are used, 25 percent.

Mr. Burton J. Howard, another Government witness, corroborated the testimony of Mr. Callaway in many respects. He, however, described another method of production and testified, in his opinion, the range of total solids between the points of 22 and 26 percent total solids would be a reasonable range. He personally was inclined to the lower figure of 22 percent, but stated that even if it were put up to the figure of 26 percent it would still be reasonable. (R., p. 120.)

The results of analyses as shown by the range in solids, given on the first page of the tabulation (Government's Exhibit No. 4), show that a certain number of samples actually fell below the 22 percent solids specified in the advisory standard promulgated in 1932. Out of the 367 samples analyzed, 16 fell below the 22 percent for the advisory standard. All the rest, that is 351, exceeded 22 percent. In this tabulation taking the 26 percent point as a basis, 254 were above 26 percent and 113 below. (R., p. 34.) Included in the 113 would be those that fell below 22 percent. Of the imported samples, that is 49, 44 ran above 26 percent. Of the total samples, 259 came from California, which truthfully reflects the fact that the great majority of the paste now used in the United States is manufactured in California.

There is widespread belief among consumers of tomato paste, both among housewives who purchase it for use in the home and for large consumers who purchase it for hotels, restaurants, institutions, that an article made in whole or in part from tomato by-products is not handled with the same degree of care and that it may not have all the desirable properties such as flavor, particularly, and other properties which they would expect in an article that was manufactured from whole tomatoes which were promptly and efficiently handled throughout the entire manufacturing process. (R., p. 37.)

It is often true that the by-product, coming from the preparation of tomatoes for canning, is not handled with the same care that characterizes whole tomatoes. It is likewise true that such by-products can be handled in a clean manner. There is likewise a difference in price when tomato paste is made from by-products and that made of paste made from whole tomatoes.

One of the Government witnesses expressed an opinion (R., p. 45), that even if the amount of by-product added did not exceed 5 percent of the finished product, nevertheless such fact should be disclosed, as it was a significant amount. From the preponderance of the evidence, it would appear that the presence of so-called by-products should be declared. Inasmuch as both from reasons of economy and from the widespread belief of consumers with reference to the less desirability of by-products, the evidence would seem to support a label declaration. The question is should there be a declaration of the presence of by-products or not and to limit the declaration to certain percentages of by-products would seem to be arbitrary. The matter is not a question of degree but whether consumers are entitled to know what the ingredients really are, of the product they are purchasing.

The use of soda, where it has been used as a neutralizing ingredient for acid in the tomatoes, should be disclosed, as it is in the interest of the consumer to know whether or not soda is present in the finished product.

It would seem from the evidence that there had been several hearings before the Federal Trade Commission in the summer of 1938; the first meeting held in San Francisco, the second meeting held in Washington. The purpose of such hearing was to draw up fair trade practice rules for the tomato paste manufacturing industry. There is testimony to the effect that at the first meeting in San Francisco a standard of 25 percent of tomato solids was suggested; that after the second meeting held in Washington, the Federal Trade Commission approved of a standard of 22 percent solids. At that time, of course, the advisory standard promulgated by the Secretary in 1932 naming 22 percent solids as the standard, was in effect. The present hearing was called to establish a reasonable definition and standard of identity under the new Federal Food, Drug, and Cosmetic Act.

Therefore, the presiding officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. *Clean.* Tomatoes used in the manufacture of tomato paste must be clean. (R., pp. 16, 17, 28, 119.)

2. *Mature.* Tomatoes used in the manufacture of tomato paste must be mature. (R., p. 157.)

3. *Red.* Tomatoes used in the manufacture of tomato paste must be red tomatoes. (R., pp. 28, 119, 124.)

4. *Trimmed for rot.* In the preparation of tomatoes for the manufacture of paste, all rot and decayed portions of the tomatoes must cut out and discarded. (R., pp. 16, 19, 28, 119.)

5. *Sound.* The tomatoes or parts of the tomatoes which go into the manufacture of paste must be sound. (R., pp. 16, 19, 28, 119.)

6. *Trimmings.* Trimmings in the form of portions of the tomatoes which are cut away because of imperfections are not used in the manufacture of paste. (R., pp. 159, 163.)

7. *Artificial color.* Artificial coloring is not used in the manufacture of tomato paste. (R., p. 200.)

8. *Tomato ingredients.* Tomato paste is manufactured from the following raw-material ingredients (R., pp. 16, 21, 119):

(1) Whole tomatoes of the red variety or whole red tomatoes of the pear-shaped variety;

(2) By-products of tomatoes obtained in the process of canning tomatoes, consisting of clean, sound tomato flesh and liquid;

(3) By-products of tomatoes obtained in the manufacture of tomato juice, consisting of tomato residue of the fleshy parts of the tomato and tomato liquid;

(4) Tomato paste may be made from any one of the above raw-material ingredients or any combination thereof.

9. *Manufacturing process.* Tomato paste is manufactured by crushing and straining clean, sound, red whole tomatoes or tomato by-products obtained in the process of preparing canned tomatoes or in the process of preparing tomato juice. The crushing and straining process is carried out in such a manner as to remove the seeds, skins, and cores of the tomato from the strained material. The tomato material thus obtained is concentrated to a definite point and packed so as to prevent spoilage. (R., pp. 16, 21.)

10. *Advisory standard.* Under the present advisory standard for tomato paste, the minimum tomato-solid content prescribed is 22 percent tomato solids. (R., p. 13.)

11. *Method for determining concentration.* (1) When total solids are to be determined for the purpose of the standard or for any legal purposes, the method to be employed is the method set forth by the "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, page 499, Section 16, "Total Solids tentative." (R., p. 22.)

(2) When salt-free solids are to be determined, sodium chloride is to be found by the method prescribed on page 500 of the book referred to in (1) above, under "Section 22 Sodium Chloride—Official." The amount of sodium chloride found is to be subtracted from the total solids found. The difference shall be considered to be the salt-free solids of the product. (R., p. 22.)

12. *Flavoring ingredients.* Sweet basil leaves, oil of sweet basil, and salt are sometimes used in the tomato paste. (R., p. 18.)

13. *Flavoring ingredients declared on label.* The interest of the consumer requires that the presence of flavoring ingredients be declared on the label. (R., pp. 39, 40, 123, 140, 144, 146, 149, 151.)

14. *Trimmings a misnomer.* The word "trimmings," as used to describe some of the ingredients in tomato paste, is a misnomer and a misleading term, and should be abolished from the standard. (R., pp. 43, 44, 70, 142, 143, 146, 147, 149, 150, 152, 162, 163.)

15. *Minimum degree of concentration.* Tomato paste should have a minimum total-solid content of 26 percent, or a minimum salt-free-solid content of 25 percent. (R., pp. 30–33.)

16. *Labeling to indicate use of by-products.* When tomato paste is manufactured, in whole or in part, from peels and cores obtained as a by-product in the manufacture of canned tomatoes, or from juice and tomato residue obtained as a by-product in the manufacture of tomato juice, honesty and fair dealing in the interest of the consumer require that the label [declaration] declare the source of the raw-material ingredients used. (R., pp. 35, 37, 41, 45, 70, 141, 148, 149, 151, 162, 170.)

17. *Sodium bicarbonate — labeling.* Sodium bicarbonate as an acid-neutralizing agency in the manufacturing of tomato paste should be declared upon the label of the finished product. (R., pp. 38, 11, 123, 140, 144, 149, 152, 153.)

18. *Pear-shaped tomatoes.* The Italian pear-shaped tomato, grown largely in California, is frequently used in the manufacture of tomato paste. (R., pp. 116, 117.)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing suggested findings of fact, the following reasonable definition and standard of identity for the food commonly known as tomato paste is hereby suggested, to be promulgated as a regulation:

Tomato Paste—Identity; Labeling of Optional Ingredients. (a) Tomato Paste is the food prepared from one or any combination of two or all of the following optional ingredients:

(1) The liquid obtained from mature tomatoes of red varieties, with any unsoundness removed by trimming.

(2) The liquid obtained from tomato by-products from the canning of tomatoes (consisting of clean, sound peelings and cores without the liquid draining therefrom during or after peeling and coring).

(3) The liquid obtained from the tomato by-product from the extraction of tomato juice.

Such liquid is obtained by so straining such tomato material, with or without heating, as to exclude skins, seeds, and other coarse or hard substances. It is concentrated, and may be seasoned with one or more of the optional ingredients:

(4) Salt.
(5) Spice.
(6) Flavorings.

It may contain, in such quantity as neutralizes a part of the tomato acids, the optional ingredient:

(7) Baking soda.

When sealed in a container it is so processed by heat, before or after sealing, as to prevent spoilage. It contains not less than 25 percent of salt-free tomato solids, as determined by the following method.

Determine total solids by the method prescribed on page 499 under "Total Solids—Tentative", and sodium chloride by the method prescribed on page 500 under "Sodium Chloride—Official", of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1935. Subtract the percent of sodium chloride found from the percent of total solids found; the difference shall be considered to be the percent of salt-free tomato solids.

(b) When optional ingredient (2) is present, in whole or in part, the label shall bear the statement "Made From—" (or "Made in Part From—", as the case may be) "Tomato By-Products From Canning Tomatoes". When optional ingredient (3) is present, in whole or in part, the label shall bear the statement "Made From—" (or "Made in Part From—", as the case may be) "Tomato By-Products From Extraction of Tomato Juice". If both such ingredients are present, such statements may be combined in the statement "Made From—" (or "Made in Part From—", as the case may be) "Tomato By-Products From Canning Tomatoes and From Extraction of Tomato Juice". When optional ingredient (5) or (6) is present, the label shall bear the statement or statements "Spice Added" or "With Added Spice", "Flavoring Added" or "With Added Flavoring", as the case may be. When optional ingredient (7) is present, the label shall bear the statement "Baking Soda Added". If two or all of the optional ingredients (5), (6), and (7) are present, such statements may be combined, as for example, "Spice, Flavoring, and Baking Soda Added". In lieu of the word "Spice" or "Flavoring" in such statement or statements the common or usual name of such spice or flavoring may be used. Wherever the name "Tomato Paste" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion, and order, shall transmit such objection in writing to the Hearing Clerk. At the same time each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

Date: March 27, 1939.

[F. R. Doc. 39–1103; Filed, March 31, 1939; 3:15 p. m.]

IN THE MATTER OF PUBLIC HEARING FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: TOMATO PUREE, TOMATO PASTE, TOMATO CATSUP, TOMATO JUICE.

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO TOMATO CATSUP

General Statement

1. In pursuance of the authority of subsection (e), Section 701 of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U. S. C. 371 (e)], the Secretary of Agriculture, on his own initiative, published, on December 15, 1938, which appeared on page 3012 of the FEDERAL REGISTER, a notice of a public hearing to be held on January 16, 1939, in Room 3036, Department of Agriculture, South Building, Independence Avenue, between 12th and 14th Streets, S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: tomato puree, tomato paste, tomato catsup, tomato juice. This said notice contained a proposal, in general terms, for a reasonable definition and standard of identity for each of such foods. John McDill Fox was designated as the presiding officer for such hearings. Thereafter, a public hearing was held at the time and place specified in the notice, and John McDill Fox served as presiding officer. (Government's Exhibit No. 1.)

2. At said hearing the presiding officer announced that he would first hold a hearing on tomato puree.

3. In pursuance of that announcement, he did so hold a hearing on tomato puree, and continued the hearing with reference to the other foods, at dates subsequently to be announced.

4. On January 19, 1939, at 10 a. m. the hearing on tomato catsup was convened and concluded at 4:10 p. m. the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. The presiding officer, therefore, makes this report and suggests that the Secretary make, on the basis of the substantial evidence contained in the record, the findings of fact herein contained, the conclusions herein suggested, and as so found, to order the promulgation of the regulation suggested herein.

6. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938, concerned itself, inter alia, with a proposed reasonable definition and standard of identity for the food product commonly known as tomato catsup. It read as follows:

Catsup (or tomato catsup) is the product obtained from clean, mature, red tomatoes which are sound (or from which imperfections have been removed by hand trimming) by crushing and straining, free from skins, seeds and cores, with or without application of heat, by evaporating so as to result in a finished product of thick consistency; by seasoning with sugar, salt, a vinegar, spice, spice oil and other seasoning; by straining to a smooth consistency; it is sealed in a container and processed by heat, before or after sealing, to prevent spoilage.

7. Within the time so provided, various interested persons filed proposed findings of fact, based upon the evidence adduced at the hearing, which if granted, would modify the proposal originally printed in the FEDERAL REGISTER. These proposed findings of fact concerned: (1) the name of the product, (2) the type of food product, (3) the nature of the tomato ingredients, (4) the spices and other flavorings, (5) the kind of sugar used, and (6) the determination of concentration.

8. There was controversy in the evidence with reference to the manner of determining concentration; there was likewise controversy with reference to whether any tomato ingredient save whole tomatoes should be used; further controversy developed with reference to label declarations of optional tomato ingredients. There was testimony that other sweetening agents than sugar, meaning sucrose, should be permitted.

9. Testimony was given which described in detail what tomato catsup was and what was the background of the Department in setting previous advisory standards, and under the present act, the basis of presenting the proposal for the standard under such act.

Mr. Callaway, a Government witness, who is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Foods Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department. It appears that he entered the Bureau of Chemistry of the Department of Agriculture in 1914; and except for a brief interruption for war service, has been continuously with the Department. During such time he had many occasions to observe the methods of manufacture of tomato catsup in various plants operating in the eastern third of the United States, and likewise had occasion to supervise the laboratory chemical examination of a great many samples of tomato paste.

As Secretary of the Food Standards Committee of the Food and Drug Administration, he plans and directs field and laboratory investigations in order to develop the methods of manufacturing and the composition of various foods which are being studied with a view to standardization, receiving reports of field representatives, both analysts and inspectors, which reports he studies and correlates in order to facilitate their use. He also consults with representatives of the trade and with consumer organization in a further effort to secure information helpful in the consideration of proposals leading to the standardization of food.

The origin and history of the Food Standards Committee was then traced by the witness. From his testimony it appeared that prior to the passage of the Food and Drugs Act of 1906, there was no uniformity with respect to definitions and standards for various food products. The Association of Official Agricultural Chemists had, however, appointed a committee whose duty it was to formulate standards of purity for various food products. The Secretary of Agriculture took advantage of the services of this committee and was authorized by law at various times to do this.

With the passage of the Food and Drugs Act of 1906, the Secretary of Agriculture appointed an advisory committee, the members of which were selected from the Association of Official Agricultural Chemists and from the Association of State and National Food and Dairy Departments and from the Bureau of Chemistry. There was assigned to this Committee the task of promoting the making of food standards. This body functioned for a short time and finally ceased to exist in the latter part of 1907.

In 1913, the Association of American Dairy, Food and Drug Officials adopted a resolution urging the creation of a Food Standards Committee to take, in a way, the place of the committee which had functioned in the past. In response to this resolution, the Secretary, in 1913, created such a committee. It was called a Joint Committee on Food Standards and its members were selected three each from the Association of Dairy, Food and

Drug Officials, the Association of Official Agricultural Chemists and the Bureau of Chemistry of the United States Department of Agriculture. This committee functioned in an advisory capacity from its creation in 1913 until the passage of the Food, Drug, and Cosmetic Act of 1938. The new Food, Drug, and Cosmetic Act does not provide for a Food Standards Committee, but the valuable services rendered by the Food Standards Committee in the past prompted the Secretary of Agriculture to create a new Food Standards Committee. This new committee, of which the witness is secretary, is composed of six members, two from the Association of Dairy, Food and Drug Officials, two from the Association of Official Agricultural Chemists, and two from the Food and Drug Administration of the Department of Agriculture.

The chief purpose of the Committee is to serve in an advisory capacity on food standards. This committee meets at the call of the Chief of the Food and Drug Administration and studies factual information which has been collected by the Food and Drug Administration.

In addition, the committee studies the official factory inspection reports which have been submitted by representatives of the Food and Drug Administration in the course of regular visits having to do with the inspection of various plants manufacturing food products in various parts of the country.

The committee also studies the reports of chemical analysis of foods made by regularly authorized analysts of the Food and Drug Administration. It also confers with trade representatives, representatives of consumer organizations and trade associations in an attempt to secure all available information which will be helpful in the formulation of food standards.

On the basis of all information and evidence available, it assists the Food and Drug Administration in the formulation of proposals leading toward the standardization of food. It would appear that the first standard for catsup, as promulgated by the Secretary of Agriculture on June 26, 1906, read:

Catchup (ketchup, and catsup) is a clean, sound product made from properly prepared pulp of clean, sound, fresh, ripe tomatoes and spices, with or without sugar and vinegar. (R., p. 16.)

Except for minor changes in wording, there had been no substantial change in this original definition and standard from the time of its promulgation to the time of the present proposal upon which this hearing was had. A recent survey was made for the Food and Drug Administration following plans formulated by the witness and reports of this investigation were submitted and the results tabulated. The original reports were present in the hearing room marked for identification and made available for examination. The summary of the reports showed that field representatives of the Food and Drug Administration visited 52 plants manufacturing tomato catsup, located in various parts of the United States. These representatives secured information about the manufacture of catsup and in most instances were actually permitted to witness the plants in operation. Some firms visited had a nation-wide distribution; some a very limited output; and others a production intermediate between those two. A number of firms made catsup from whole tomatoes. Some made catsup, in whole or in part, from tomato byproducts. The procedure that was described was not controverted, with the exception of the evidence given by the witness with reference to the concentration. From the data of the witness it would seem that the firms reporting under this survey reported a concentration to a point between two to one and three to one. (R., p. 21.)

Cross-examination raised some question as to the degree of concentration, though there did not appear to be any question but that tomato catsup was a concentrated product. The witness, stated that a specification of solids would be practically useless and that it would be probably better to try and specify the degree of concentration. (R., p. 37.)

The question of sugar was raised both on direct examination and on cross-examination. The witness testified that in his use of the word "sugar" he meant sucrose, (R., pp. 40–41) but that under former advisory standards dextrose had been specifically named as an alternative ingredient with sugar, and that personally, if there was any reason to use dextrose or other sugar, he could see no objection to it. The question of sugar was further gone into by Mr. Seulke in cross-examination of the witness Callaway, and a suggestion that other sweetening agents might be permitted, was made.

The proposal as prepared in the FEDERAL REGISTER did not include the use of what has been termed by the witnesses, "tomato byproducts". The witnesses for the Government testified that such products should be permitted if the finished product were labeled to show their presence when used. Consumer testimony likewise supported this contention.

It would seem, from the state of the record, that there is not sufficient substantial evidence for the defining of sugar in one way or another and that, therefore, no specific finding should be made on this matter. It would likewise appear, from the state of the record, that there is not satisfactory evidence on the manner of determination of concentration and that, therefore, no specific finding should be made on this matter.

Therefore, the presiding officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed findings of fact hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. *Clean.* Tomatoes used should be clean. (R., pp. 21, 67.)

2. *Mature.* Tomatoes used should be mature. (R., pp. 21, 84.)

3. *Red.* Tomatoes used should be of red varieties. (R., pp. 21, 91.)

4. *Rot.* All rot and decay should be cut out of the tomatoes and thrown away. (R., pp. 21, 70.)

5. *Imperfections.* Imperfections should be removed by trimming. (R., pp. 21, 70.)

6. *Sound.* Tomatoes should be sound. (R., pp. 21, 67.)

7. *Tomato ingredients:*

(1) As a source of raw material, whole tomatoes of red varieties may be used. (R., pp. 20, 67.)

(2) As a source of raw material, the by-products from canned tomatoes of red varieties, consisting of clean sound peelings, cores, pieces of or small tomatoes, may be used in whole or in part with label declaration to show such use. (R., pp. 22, 23, 68, 71.)

(3) As a source of raw material, the by-products from tomato juice, consisting of the portion of red tomatoes remaining after a partial extraction of the juice, may be used in whole or in part with label declaration to show such use. (R., pp. 22, 23, 68, 71.)

(4) The raw materials specified above should be crushed and strained, with or without the application of heat, so that skins, seeds and cores are excluded. (R., pp. 21, 70.)

8. *Sugar.* Sugar is always added. (R., pp. 21, 40.)

9. *Salt.* Salt is always added as seasoning. (R., pp. 21, 70.)

10. *Vinegar.* Vinegar, usually distilled vinegar, is added. (R., pp. 21, 27.)

11. *Spice.* Spices, either in the form of whole or ground spice or in the form of spice oil are added. (R., pp. 21, 27, 68.)

12. *Onions, garlic.* Onions and garlic, either or both, are usually added. (R., pp. 21, 68.)

13. *Processing.* The finished catsup is usually sealed in a container processed so as to insure its keeping, and such processing may be effected either before or after sealing. (R., pp. 57–65; 67–72.)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food commonly known as tomato catsup is hereby suggested to be promulgated as a regulation:

"Catsup, Ketchup, Catchup—Identity; Labeling of Optional Ingredients. (a) Catsup, Ketchup, Catchup, is the food prepared from one or any combination of two or all of the following option ingredients:

"(1) The liquid obtained from mature tomatoes of red varieties, with any unsoundness removed by trimming.

"(2) The liquid obtained from tomato by-products from the canning of tomatoes (consisting of clean, sound peelings and cores from tomatoes of red varieties, with or without the liquid draining therefrom during or after peeling and coring).

"(3) The liquid obtained from the tomato by-product from the extraction of tomato juice.

Such liquid is obtained by so straining such tomato material, with or without heating, as to exclude skins, seeds, and other coarse or hard substance. It is concentrated, and is seasoned with sugar, salt, a vinegar or vinegars, spices or flavoring or both and onion or garlic or both. When sealed in a container it is so processed by heat, before or after sealing, as to prevent spoilage.

"(b) When optional ingredient (2) is present, in whole or in part, the label shall bear the statement 'Made From—' (or 'Made in Part From—,' as the case may be) 'Tomato By-Products From Canning Tomatoes.' When optional ingredient (3) is present, in whole or in part, the label shall bear the statement 'Made From—' (or 'Made in Part From—' as the case may be) 'Tomato By-Product From Extraction of Tomato Juice.' If both such ingredients are present, such statement may be combined in the statement 'Made From—' (or 'Made in Part From—,' as the case may be) 'Tomato By-Product From Canning Tomatoes and From Extraction of Tomato Juice.' Wherever the name 'Catsup,' 'Ketchup,' or 'Catshup' appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed or graphic matter."

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion and order, shall transmit such objection in writing to the Hearing Clerk. At the same time each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

MARCH 27, 1939.

[F. R. Doc. 39-1115; Filed, April 1, 1939; 12:44 p. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

IN THE MATTER OF APPLICATIONS OF NORTHEASTERN LUMBER MANUFACTURERS ASSOCIATION AND SUNDRY OTHER PARTIES FOR EXEMPTION OF LUMBER INDUSTRY FROM MAXIMUM HOURS PROVISION OF FAIR LABOR STANDARDS ACT OF 1938

NOTICE OF HEARING

Whereas, the Northeastern Lumber Manufacturers Association, the Timber Producers Association of Minnesota, the American Pulpwood Association and the Wood-Turners Service Bureau applied, pursuant to Section 526.4 of the Regulations Applicable to Industries of a Seasonal Nature,[1] for exemption of the lumber industry in the geographical areas where their member companies operate, from the maximum hours provision of the Fair Labor Standards Act of 1938 as an industry of a seasonal nature pursuant to Section 7 (b) (3) of the Act, and

Whereas, a public hearing on the applications was held in Washington, D. C., on January 16, 1939, before Presiding Officer Harold Stein, a duly authorized representative of the Administrator of the Wage and Hour Division of the Department of Labor, and

Whereas, the said Presiding Officer determined on February 25, 1939, that the applications should be denied upon the basis of the record made at the hearing, and

Whereas, petitions have been filed by the applicants pursuant to Section 526.7 of the said Regulations for review of the determination of February 25, 1939, and

Whereas, upon due examination and consideration of the applications for exemption, the record of the proceedings, the findings of the Presiding Officer and the petitions for review, it has been found desirable to set a hearing pursuant to Section 526.5 of the Regulations for the purpose of taking evidence on the questions raised by the applications for exemption, in lieu of reviewing the determination under the provisions of Section 526.7 of the Regulations.

Now, therefore, notice is hereby given of a public hearing to be held before Administrator Elmer F. Andrews in Room, 3229, Department of Labor Building, Washington, D. C., beginning at 10:00 A. M. on April 17, 1939, to take testimony for the purpose of determining:

(1) Whether the northern section of the lumber industry, as defined herein, is an industry of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act of 1938, and Part 526 of the Regulations issued thereunder.

(2) Whether the cutting, peeling, hauling, driving and auxiliary operations involved in the production of sap peeled pulpwood are of a seasonal nature within the meaning of Section 7 (b) (3) of the Act and Part 526 of the Regulations, and whether such operations can be classified as an industry or a separate branch of an industry within the meaning of Sections 7 (b) (3) and 3 (h) of the Act and Part 526 of the Regulations.

(3) Whether there are any other divisions of the northern section of the lumber industry which are of a seasonal nature and can be classified as industries or separate branches of an industry within the meaning of Sections 7 (b) (3) and 3 (h) of the Act and Part 526 of the Regulations.

The "northern section of the lumber industry," as used in this notice, means the operations of logging and sawmilling, together with auxiliary operations, which are conducted in the States of Maine, Michigan, Minnesota, New Hampshire, New York, Pennsylvania, Vermont and Wisconsin. In the case of sap peeled pulpwood production, the geographical area to be considered at the hearing will include, in addition to these States, Kentucky, Maryland, North Carolina, Ohio, Tennessee, Virginia and Washington.

In order to avoid unnecessary duplication of testimony, the transcript of the record of the hearing held on January 16, 1939, before the Presiding Officer, will be incorporated in the record of the hearing before the Administrator. Copies of the transcript may be obtained at prescribed rates from the official reporters, Ward and Paul, 1706 L Street NW., Washington, D. C.

Any person interested in supporting or opposing the applications may appear on his own behalf or on behalf of any other person, provided that he shall file with the Administrator at his office in Washington, D. C., prior to April 14, 1939, a Notice of Intention to Appear which shall contain the following information:

(1) The name and address of the person appearing.

(2) If he is appearing in a representative capacity, the name and address of the person or persons whom he is representing.

(3) Whether he is appearing in support of or in opposition to the applications for exception.

(4) The approximate length of time which his presentation will consume.

"Person," as used in this notice, means individual, partnership, firm, association, corporation, trust or labor organization.

Signed at Washington, D. C., this 31st day of March, 1939.

ELMER F. ANDREWS,
Administrator.

[1] 3 F. R. 2534 DI.

[F. R. Doc. 39-1133; Filed, April 3, 1939; 12:30 p. m.]

CIVIL AERONAUTICS AUTHORITY.

[Docket No. 2-401 (E)-2]

IN THE MATTER OF THE APPLICATION OF CONTINENTAL AIR LINES, INC.

[Docket No. 150]

IN THE MATTER OF THE APPLICATION OF BRANIFF AIRWAYS, INC.

FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER SECTION 401 (E) (2) OF THE CIVIL AERONAUTICS ACT OF 1938

Order

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C. on the 24th day of March 1939.

Under consideration of the motion of Continental Air Lines, Inc., for leave under the Rules of Practice to file a reply brief to the brief filed by Braniff Airways, Inc., and of the request of Braniff Airways, Inc., for oral argument:

It is ordered, That Continental Air Lines, Inc., be and it is hereby given leave to file a reply brief on or before April 3, 1939, and that the above-entitled proceeding be set for oral argument before the Authority at its offices in Washington, D. C., at 10 o'clock, (Eastern Standard Time), April 5, 1939.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39-1131; Filed, April 3, 1939; 12:22 p. m.]

[Docket No. 17-401 (E)-1]

IN THE MATTER OF THE APPLICATION OF TRANSCONTINENTAL & WESTERN AIR, INC.

FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER SECTION 401 (E) (1) OF THE CIVIL AERONAUTICS ACT OF 1938

Order

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C. on the 24th day of March 1939.

The date of oral argument in the above-entitled proceeding now assigned before the Authority on April 12, 1939, is hereby changed to April 6, 1939, at 10 o'clock a. m. (Eastern Standard Time), at the office of the Civil Aeronautics Authority in Washington, D. C.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39-1132; Filed, April 3, 1939; 12:22 p. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

[Docket No. 3749]

IN THE MATTER OF LAMBERT PHARMACAL COMPANY

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH I. Respondent, Lambert Pharmacal Company, is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 2101 Locust Street, St. Louis, Missouri. Respondent corporation is now, and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling and distributing "Listerine", an antiseptic mouthwash, and other allied products. Respondent sells and distributes said products in commerce between and among the various states of the United States and in the District of Columbia and as a result of said sales causes said products to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in the various states of the United States and in the District of Columbia, other than the state of origin of the shipment. There is and has been, at all times mentioned, a continuous current of trade and commerce in the said products across state lines between respondent's factory and the purchasers of said products. Said products are sold and distributed for resale within the various states of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent is now, and during the time herein mentioned has been, in substantial competition with other corporations, and with individuals, partnerships and firms engaged in the business of manufacturing, selling and distributing antiseptic mouthwash and other allied products in commerce.

PAR. 3. In the course and conduct of its business, as described in Paragraph One hereof, respondent since June 19, 1936, has been and now is allowing certain percentage rebates to certain of its customers who are selected by the respondent, hereinafter designated as favored customers, in addition to regular trade discounts generally allowed to all of the respondent's customers. Such favored customers, to whom the respondent allows such percentage rebates, furnish the respondent with certain advertising, selling or warehousing facilities and place with the respondent a certain minimum order for its said products. Such percentage rebates are paid to said favored customers on their previous month's purchases in consideration for such services. The respondent pays these percentage rebates to its favored customers without making such payments available on proportionately equal terms to all other customers competing with such favored customers in the distribution of respondent's said products.

Said percentage rebates are allowed by the respondent to its favored customers as follows:

(a) The respondent pays to a certain group of the aforesaid customers, wholesalers, handling the respondent's products, in consideration of certain warehousing and selling facilities furnished by such wholesaler, a 10% rebate on each month's purchases, such rebate being paid in the form of a check by the respondent during the month subsequent to that in which such purchases are made;

(b) The respondent pays to another group of such aforesaid customers, wholesalers, a 5% rebate on each month's purchases paid during the subsequent month, in consideration of such rebate said wholesaler is to furnish warehouse facilities for the respondent's products;

(c) The respondent pays to certain of such aforesaid customers, retailers, a 10% rebate on each month's purchases, payable during the subsequent month, in consideration of which the purchasers agree to furnish the respondent with certain advertising facilities and sales services for the respondent's products;

(d) The respondent pays to certain other of such aforesaid customers, retailers, a rebate of 5% of each month's purchases payable during the subsequent month, in consideration of certain advertising facilities to be furnished by such retailer for the respondent's products.

In order to be eligible for such rebates paid by the respondent, its said favored wholesale customers must place orders of a minimum of $50 for the respondent's products, to be made in one shipment.

In order to be eligible for such rebates, respondent's said favored retail customers must place orders of a minimum of $36 for the respondent's products, to be made in one shipment.

PAR. 4. The above-described acts and practices of respondent are in violation of sub-section (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13).

Wherefore, the premises considered, the Federal Trade Commission, on this 29th day of March, A. D. 1939, issues its complaint against said respondent.

NOTICE

Notice is hereby given you, Lambert Pharmacal Company, respondent herein, that the 5th day of May, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service

upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its secretary, and its official seal to be hereto affixed at Washington, D. C., this 29th day of March, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39–1118; Filed, April 3, 1939; 9:16 a. m.]

RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 330]

AMENDMENT OF PRIOR ALLOCATIONS OF FUNDS FOR LOANS

MARCH 30, 1939.

I hereby amend Administrative Order No. 103, dated May 27, 1937 by transferring the allocation of $60,000 therein made for New Mexico 4G Eddy to New Mexico 7004C1 Eddy.

I hereby amend Administrative Order No. 128, dated August 24, 1937, by transferring the allocation of $65,000 therein made for New Mexico 8004GB Eddy to New Mexico 8004D1 Eddy.

I hereby amend Administrative Order No. 279, dated August 18, 1938, by transferring the allocation of $150,000 therein made for Iowa R9046A1 Pottawattamie to Iowa R9026B1 Shelby.

I hereby amend Administrative Order No. 313, dated December 12, 1938, by rescinding the allocation of $8,000 therein made for Texas R9074W1 Baylor.

JOHN M. CARMODY,
Administrator.

[F. R. Doc. 39–1107; Filed, April 1, 1939; 10:31 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the 31st day of March, A. D. 1939.

[File No. 1–1810]

IN THE MATTER OF PROCEEDING UNDER SECTION 19 (A) (2) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, TO DETERMINE WHETHER THE REGISTRATION OF ASSOCIATED GAS AND ELECTRIC COMPANY COMMON STOCK, $1 PAR VALUE, AND CLASS A STOCK, $1 PAR VALUE SHOULD BE SUSPENDED OR WITHDRAWN

ORDER AMENDING ORDER FOR HEARING

It is ordered, That the Order designated "Order for Hearing" authorized and issued[1] in the above entitled cause by the Commission on the twelfth day of January, 1939, be, and the same is, hereby amended by striking the fourth paragraph of Section II and substituting therefor the following paragraph:

The failure to state in response to Item 34 required information relating to revaluations in Plant, Property and Equipment, or in Intangible Assets, which revaluations in the aggregate in respect of the consolidated balance sheet of the registrant and its subsidiaries as of December 31, 1934, were in excess of $100,000,000, and the failure to state required information relative to revaluations of investments in respect of the balance sheet of the registrant.

It is further ordered that said Order designated "Order of or Hearing" be, and the same is, hereby amended by adding the following paragraph under Sections II–A, III–A, IV–A and V–A:

The failure to reflect the extent of depreciation in stating the amount of investments appearing in the corporate balance sheet of the registrant.

It is further ordered, That said Order designated "Order for Hearing" be, and the same is, hereby amended by striking paragraphs designated II—D–2; II—G–2; III—D–2; III—G–2; IV—D–2; IV—F–2 and substituting therefor the following paragraph bearing the same respective designations:

Charges of debt discount and expense to Capital Surplus which should have been charged either to income account under a periodic amortization plan or, upon retirement of bonds, to income account or Corporate (Earned) Surplus, as appropriate.

It is further ordered that a copy of this Order be served upon registrant at least eight days prior to the time this Order is made the subject of inquiry in the hearing scheduled to be convened before the Trial Examiner, William W. Swift, Esquire, in this proceeding.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

MARCH 31, 1939.

[F. R. Doc. 39–1122; Filed, April 3, 1939; 11:17 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 3rd day of April, A. D. 1939.

[File No. 58–10]

IN THE MATTER OF PENNSYLVANIA INVESTING CORPORATION

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 12 (f) and Rule U–12F–1 thereunder of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on April 18, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the

[1] 4 F. R. 384 DI.

room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before April 13, 1939.

The matter concerned herewith is in regard to an application pursuant to Rule U–12F–1 filed by Pennsylvania Investing Corporation, a direct subsidiary of Central U. S. Utilities Company and an indirect subsidiary of Associated Electric Company, for approval of the sale by it to Kentucky-Tennessee Light and Power Company, an associated company, of $212,500 principal amount of the latter company's First and Refunding Bonds, 5 percent series, due 1954; to be purchased by said associated company for retirement, out of funds derived from the sale of certain of its physical assets. The purchase price for said securities is $180,000, alleged to be the average cost thereof to applicant; and the proceeds of such sale are to be applied, it is stated, to the applicant's indebtedness on its 6 percent convertible obligation due March 1, 1963 to Associated Electric Company in an amount not less than $179,000.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–1121; Filed, April 3, 1939; 11:17 a. m.]

UNITED STATES CIVIL SERVICE COMMISSION.

CONDITION OF THE APPORTIONMENT AT CLOSE OF BUSINESS FRIDAY, MARCH 31, 1939

Important. Although the apportioned classified civil service is by law located only in Washington, D. C., it nevertheless includes only about half of the Federal Civilian positions in the District of Columbia. Positions in local post offices, customs districts, and other field services outside of the District of Columbia which are subject to the Civil Service Act are filled almost wholly by persons who are local residents of the general community in which the vacancies exist. It should be noted and understood that so long as a person occupies, by original appointment, a position in the apportioned service, the charge for his appointment continues to run against his State of original residence. Certifications of eligibles are first made from States which are in arrears.

State	Number of positions to which entitled	Number of positions occupied
IN ARREARS		
1. Puerto Rico	592	41
2. Hawaii	141	15
3. California	2,177	767
4. Alaska	23	9
5. Texas	2,233	905
6. Louisiana	806	379
7. Michigan	1,857	886
8. Arizona	167	87
9. New Jersey	1,550	826
10. South Carolina	667	390
11. Ohio	2,549	1,538
12. Oklahoma	919	566
13. Mississippi	771	476
14. Alabama	1,015	629
15. Arkansas	711	449
16. New Mexico	162	104
17. Georgia	1,115	751
18. Kentucky	1,003	685
19. North Carolina	1,216	835
20. Tennessee	1,003	766
21. Wisconsin	1,127	866
22. Illinois	2,926	2,255
23. Connecticut	616	484
24. Delaware	91	77
25. Oregon	366	324
26. Indiana	1,242	1,103
27. Florida	563	526
28. Nevada	35	33
29. New York	4,827	4,562
30. Pennsylvania	3,693	3,520
31. Idaho	171	163
32. West Virginia	663	658
33. Maine	306	304
QUOTA FILLED		
34. Wyoming	86	86

State	Number of positions to which entitled	Number of positions occupied	Net gain or loss since July 1, 1938
IN EXCESS			
35. Utah	195	196	+11
36. New Hampshire	178	179	+7
37. Massachusetts	1,629	1,641	+12
38. Missouri	1,392	1,425	−39
39. Washington	599	617	+45
40. Colorado	397	409	+14
41. Montana	206	215	−18
42. Minnesota	983	1,034	−42
43. Vermont	138	146	+2
44. Kansas	721	765	+24
45. North Dakota	261	279	+22
46. Rhode Island	264	289	+24
47. South Dakota	266	294	0
48. Iowa	947	1,084	−19
49. Nebraska	528	626	−15
50. Virginia	929	1,937	−30
51. Maryland	626	1,883	+17
52. District of Columbia	187	8,750	−13

GAINS	
By appointment	30
By reinstatement	5
By transfer	55
By correction	5
Total	95
LOSSES	
By separation	89
By transfer	116
Total	205
Total appointments	47,834

NOTE.—Number of employees occupying apportioned positions who are excluded from the apportionment figures under Section 2, Rule VII, and the Attorney General's opinion of Aug. 25, 1934, 14,719.

By direction of the Commission.

[SEAL] L. A. MOYER,
Executive Director and Chief Examiner.

[F. R. Doc. 39–1119; Filed, April 3, 1939; 9:50 a. m.]